

THE NEW GLASS CEILING

ANDREA KUPFER SCHNEIDER*, ABIGAIL R. BOGLI**
& HANNAH L. CHIN***

Women belong in all places where decisions are being made.

—Justice Ruth Bader Ginsburg¹

Until the last decade, gender inequality in the legal profession was self-evident. Law school classrooms and law firm offices were overwhelmingly filled with men. In recent years, women have outnumbered men in law school classes and reached parity with men among first-year associates. These developments have created the misperception that gender equality has been achieved. In this Article, we challenge this complacency. We present new evidence from a detailed case study of law firms in a midsize city, showing

* Professor of Law, Director of the Kukin Program for Conflict Resolution, Cardozo Law School. With much appreciation for comments and helpful discussion from my colleagues Cynthia Alkon, Jill Gross, Art Hinshaw, Rachel Landy, Carrie Menkel-Meadow, Michael Moffitt, Kelly Browe Olson, Nora Platt, Samuel Weinstein, and Nancy Welsh as well as the Cardozo Law School Summer Faculty Workshop. Emily Glazier, Samantha Harberg, Adlai Lamason, and Jaimie Meyer provided excellent research assistance. We are also grateful to the Institute for Women's Leadership at Marquette University for its support of the research project and to Dan Reyburn and Mason Chin for their regression analysis.

** Associate Attorney, Quarles & Brady LLP; J.D., Marquette University Law School, 2022; B.A., University of Wisconsin-Madison, 2019. Thank you to Hannah Chin, Jen Knackert, and Rozita Gerhardt for their constant support, laughs, and love. Thank you to my family for never doubting my goals. Thank you to Professor Andrea Kupfer Schneider who continuously makes me proud to be a woman attorney. And finally, thank you to Quarles & Brady for being one of the good ones and striving each day to be better. *This Article represents the opinion of the author and is not intended to represent the perspective of Quarles & Brady LLP.*

*** Human Resources Manager and Associate Legal Counsel, School District of Whitefish Bay; J.D., cum laude, Marquette University Law School, 2022; B.A., magna cum laude, Loyola University Chicago, 2019. Thank you to Abigail Bogli, my brilliant coauthor, for her unwavering support and friendship. Thank you to Professor Andrea Kupfer Schneider, my outstanding mentor, whose leadership and vision steered this project from day one. Thank you to my parents, Dr. Conway and Kimberly Chin, and my brother, Mason Chin, for always believing in me. And finally, thank you to my husband, Dan Reyburn. Your faith in me is what propels me to continue this work, which is far from over. *This Article represents the opinion of the author and is not intended to represent the perspective of the School District of Whitefish Bay.*

1. Joan Biskupic, *Ginsburg: Court Needs Another Woman*, USA TODAY (May 5, 2009), https://web.archive.org/web/20090509151203/https://www.usatoday.com/news/washington/judicial/2009-05-05-ruthginsburg_N.htm (quoting Justice Ginsburg in an interview ahead of Justice David Souter's retirement).

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that women remain underrepresented in leadership roles and underpaid relative to their colleagues. We then show how the limited opportunities and lower pay women receive at law firms explain why so many have left. We argue that the movement for gender equality in the law should shift its focus from hiring to attrition. We provide crucial, incisive questions that law school students and career service offices can use to better investigate the problem, especially as students contemplate career decisions. By asking these questions, we believe candidates can more accurately sense what the law firm experience might entail. Through this process, we believe that students can act as a force for change.

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INTRODUCTION

In every sector of the workforce, there is evidence of gender discrimination, inequality, and bias.² Not surprisingly, the legal

2. KEVIN MILLER & DEBORAH J. VAGINS, AAUW, THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP 5 (2018), <https://www.aauw.org/app/uploads/2020/02/AAUW-2018-SimpleTruth-nsa.pdf> [<https://perma.cc/CN86-SL8D>] (“In 2017, women working full time and year-round in the United States typically were paid just 80 percent of what men were paid, a gap of 20 percent.”). Women in the medical profession face similar gender inequity to women lawyers:

Women physicians have higher rates of burnout, lower rates of professional fulfillment, and higher rates of depression. According to unpublished data from more than 200,000 responses to Press Ganey physician engagement surveys of physicians primarily in the United States conducted in 2018, 2019, and 2020, women and men find similar amounts of meaning in their work. The nuance is women have less ability to leave the work behind and give themselves a chance to recover. . . . A gender gap was particularly apparent when physicians were surveyed on their ability to decompress when they returned home from work. Female physicians had lower scores than male physicians on all four areas of decompression, including enjoying personal time without worrying about work (females: 3.39; males: 3.61), freeing their mind from work while away (females: 3.22; males: 3.43), disconnecting from work communications (females: 3.20; males: 3.41), and rarely losing sleep over work issues (females: 3.31; males: 3.51). Because this gap persisted across all female physicians ages 30 through 65, the difference cannot be explained as time-limited challenges of child-rearing responsibilities. Lastly, women physicians view how their workplace handles diversity, equity, and inclusion (DEI) differently than their male counterparts. A 2019–2020 Press Ganey diversity study of over 2,800 physicians found that Black and Hispanic female physicians are less likely to report that their organization values diversity and demonstrates a commitment to diversity than their male counterparts of the same racial or ethnic background.

Jessica Dudley, Sarah McLaughlin & Thomas H. Lee, *Why So Many Women Physicians Are Quitting*, HARV. BUS. REV. (Jan. 19, 2022), <https://hbr.org/2022/01/why-so-many-women-physicians-are-quitting>. For an earlier study on physicians, see generally Andrea Evers & Monika Sieverding, *Why Do Highly Qualified Women (Still) Earn Less? Gender Differences in Long-Term Predictors of Career Success*, 38 PSYCH. WOMEN Q. 93 (2014). Astrif Jaekel and Elizabeth St-Onge also discuss similar inequities for women in finance:

In short, women in financial services face a tougher career trade-off of higher costs and lower expected benefits. When the “deal” involved in committing themselves to getting to the top is worse for women, it is no wonder that fewer women take it. Many women must face a harsh reality: The cost of growing their career in financial services outweighs the potential benefits, taking into account the greater uncertainty and obstacles they face. As one senior female banker we interviewed put it: “If [a woman] looks up and does not see any women at the top, she wonders if she will make it — if all of the sacrifices she will have to make will pay off.” (The ambition of male employees also falls off as they age, but it is later in their careers, in response to observed failure to progress rather than in expectation of it.)

profession is not immune. First excluded from practicing law, by the end of the twentieth century, women³ achieved gender parity in law school admissions.⁴ Law school graduates in the 1990s, including one of this Article's authors, were told that it was only a matter of time before equality in all areas of the law would occur.⁵ This promise has yet to be realized. While the percentage of women law school graduates has topped fifty percent for years now,⁶ women have yet to achieve equal representation in leadership or in salary at law firms.⁷ And, faced with an unequal and often hostile environment, women leave.⁸ Many of us assume that hard work and diligence—hallmarks of a successful student—will result in a successful career. Yet, measured by leadership, salary, or tenure, we see that is not the case.⁹ Nor is it enough to assume that time will bring change.¹⁰

Astrif Jaekel & Elizabeth St-Onge, *Why Women Aren't Making It to the Top of Financial Services Firms*, HARV. BUS. REV. (Oct. 25, 2016), <https://hbr.org/2016/10/why-women-arent-making-it-to-the-top-of-financial-services-firms>.

3. We should also note that, throughout the Article, “women” refers to those who present themselves as such—much of the data is self-reported from law firms or individuals who choose to identify themselves as women. There is, no doubt, far more research to be done on transgender/gender nonconforming lawyers and the discrimination they face in the field. Thus, we have chosen not to use the word female because “[n]ot everyone who was born female is a woman, and not every woman was born female.” Isabella Sturgis, Mariam Shahab, Michael Lynch, JD Caudill & Patrick Pfohl, *Stop Using “Female” When You Mean “Woman,”* GOLIN (Mar. 31, 2021), <https://web.archive.org/web/20220315145634/https://golin.com/2021/03/31/stop-using-female-when-you-mean-woman/>.

4. See Elizabeth D. Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948–2021*, 15 J. LEGAL ANALYSIS 48, 49, 51 (2023).

5. Studies of the legal market in the 1990s seemed to also promise this change. See, e.g., Charlotte Chiu & Kevin T. Leicht, *When Does Feminization Increase Equality? The Case of Lawyers*, 33 L. & SOC'Y REV. 557 (1999); Cynthia Fuchs Epstein, Robert Sauté, Bonnie Oglensky & Martha Gever, *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995).

6. Abigail Rowe, *The Parity Paradox*, BEST LAWS. (June 25, 2018, 1:03 PM), <https://www.bestlawyers.com/article/women-now-outnumber-men-in-law-school/2029> (“Women were 50.3 percent of law-school grads in 2017 [W]omen have been graduating near 50 percent for two decades or more.”).

7. *Id.*

8. One of this Article's authors left her Big Law firm just fourteen months after starting, transitioning to an in-house role. See also Joni Hersch & Erin E. Meyers, *Why Are Seemingly Satisfied Female Lawyers Running for the Exits? Resolving the Paradox Using National Data*, 102 MARQ. L. REV. 915, 932–33 (2019).

9. Claudia Goldin, *Why Women Won* 38 (Nat'l Bureau of Econ. Rsch., Working Paper No. 31762, 2023) (noting that women have not achieved salary equality despite equalizing access to education and legal rights).

10. As Deborah Rhode reported, an *ABA Journal* poll in 2000 found that “only a quarter of female lawyers and three percent of male lawyers thought that prospects for advancement were greater for men than for women.” Deborah L. Rhode, *Unfinished*

Through new and detailed data, this Article focuses on correcting the narrative that equality in the legal profession has been achieved. To understand potential mechanisms of change, we collected data on women's representation, leadership roles, and compensation from the top fifty law firms in Milwaukee, Wisconsin. This list ranged from top national firms that are headquartered in Milwaukee, to top national firms with branches in Milwaukee, to top regional and local firms. We chose to explore this legal market for two reasons. First, we were interested in observing whether national trends reported every year by several different bar organizations would persist at smaller firms and in smaller markets. Second, we had greater access to details among the participating firms and additional in-depth data to paint a fuller picture of what is happening. This data provides more granular information than national survey results and thus enhances our understanding of gender dynamics at law firms in the United States.

The results are striking. Firms varied widely in terms of pay equity, number of women equity partners, and women in leadership positions. While national averages tend to mask these variations, our dataset allows us to expose differences among law firms themselves. In turn, this can help unmask potential drivers of inequity. For example, our analysis showed that having even one woman on the compensation committee was correlated with more women being among the top earners in the firm.

In addition to the standard national survey questions about rank, time, and position, we asked four key, unique questions: (1) How many women serve on the compensation committee? (2) How is compensation determined? (3) How transparent is that process? and (4) What is the percentage of women among the top twenty percent of earners at each firm? Although national datasets show that women are paid less on

Agenda: A Report on the Status of Women and the Legal Profession, 2001 A.B.A. COMM'N ON WOMEN PRO. 1, 14. In 2004, Nancy Reichman and Joyce Sterling, in a terrific analysis of women in the profession, noted that "recent data on the profession suggest that neither changes in the number of female law students nor changes in the number of female associates has substantially changed the profile of the profession." Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27, 29 (2004). Nor has this really changed in the two decades since that was written. In fact, although women have been over fifty percent of law students for more than five years, they have been at forty percent for more than twenty years. See ABA, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER 1947-2011 [hereinafter J.D. ENROLLMENT BY GENDER], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf [https://perma.cc/4SSQ-WGSR] (reporting that one in three 1Ls in the class of 1979 was a woman and that representation has steadily increased since that time, reaching an even split of all J.D. students in 1992 with small variations since then). Yet, as we will show, leadership numbers are near the same level they were twenty years ago. In other words, more women entering the profession has not changed the numbers of women in leadership at all.

average, we were interested in testing whether this pattern holds among the top earners in the field. Not surprisingly, it does.

But law schools and students may be able to effect change. In the hiring process, law students are uniquely positioned to press law firms on key issues such as gender equality. And law schools owe it to their students to shine a light on the inequality women and students of color may experience upon graduating—regardless of their performance in law school. We hope that law school career offices—by pushing for more transparency and equipping students to ask pointed questions after receiving an offer—can help impact change. As we discuss later, clients have already started pushing for change, and law students, equipped with targeted research on law firms, can build on this momentum. Moreover, law students and career offices have a proven record of change: In 2018, many law firms dropped their mandatory arbitration clauses in response to pressure from law students.¹¹

Our intention is to highlight the problems within the legal field, based on our own experiences as newly minted lawyers and a tenured professor, to argue that more can be done. In fact, two of us started this research as third-year law students and wrote early drafts as Big Law associates, yet one of us has already lateraled out of Big Law. This Article aims to empower law students with knowledge, confidence, and skills to ask the important questions as they interact with firms during the recruiting and hiring process. Part I provides a historical overview of women in the legal profession, while Part II corrects the dominant narrative about gender equality in law by drawing on the reality women face, as told through data and experience. Part II also reviews the study we conducted and places our findings in the context of the national data. Part III then focuses on why these findings are important to law students and how this information can assist them in making decisions.

Yes, the numbers are dismal. But firms vary, and they vary widely. Law students can uncover these variations by asking specific and focused questions. We provide a series of questions that students can use to better understand the lives of women in law firms and how those answers can impact their future experience. Finally, Part IV concludes by encouraging law students to understand their strengths and unique position as potential catalysts for change. Previous generations of law students helped push law firms to adopt changes in parental benefits, create rewards for pro bono work, and eliminate mandatory arbitration clauses. We are confident that this generation of law students can drive the next round of reforms.

11. Alexia Fernández Campbell, *Female Law Students Pressure Firms To Stop Banning Sexual Harassment Suits*, Vox (Dec. 3, 2018, 3:41 PM), <https://www.vox.com/2018/12/3/18123798/womens-student-association-mandatory-arbitration> [https://perma.cc/C5NW-CPMR].

I. EVOLUTION NOT REVOLUTION

A. *The First Crack in the Glass Ceiling*

In the nineteenth century, most American courts refused to admit women into the practice of law.¹² In 1869, Belle Babb Mansfield was the first woman to be admitted to a state bar, after the State of Iowa approved her admission.¹³ During the first half of the twentieth century, law schools commonly refused to admit women law students,¹⁴ and those that did admit them had quotas limiting the number of women admitted per class.¹⁵ Then, as the number of women law students increased, these students filed a lawsuit against ten major New York law firms alleging discriminatory hiring practices. This victory heralded major changes in the field.¹⁶ Law schools adopted new guidelines around gender representation and saw a substantial increase in women students.¹⁷ By the early 1980s, women accounted for eight percent of the practicing bar.¹⁸ And remarkably, by 1993, women comprised forty-four percent of all

12. See *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) (holding that women can be precluded from membership in the profession and that the “domestic sphere” is where they “properly belong[.]”); see also *In re Lockwood*, 154 U.S. 116, 118 (1894) (holding that states have the power to determine whether women are competent to practice law). It took until 1971 for the Supreme Court to invalidate discrimination based on sex in the historic case, *Reed v. Reed*, 404 U.S. 71, 77 (1971). For more on the historic evolution of women in the legal profession, see KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA, 1638 TO THE PRESENT* (1986); VIRGINIA G. DRACHMAN, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1880* (1993); and Carrie Menkel-Meadow, *The Comparative Sociology of Women Lawyers: The “Feminization” of the Legal Profession*, 24 OSGOODE HALL L.J. 897 (1986).

13. Nicole Johnson, *Glass Ceiling or Concrete Wall? Removing the Barriers to Gender Equality in the Legal Field Through Statutory Remedies*, 32 GEO. MASON U. C.R. L.J. 35, 38 (2021).

14. Eli Wald, *Glass Ceilings and Dead Ends: Professional Ideologies, Gender Stereotypes, and the Future of Women Lawyers at Large Law Firms*, 78 FORDHAM L. REV. 2245, 2250 (2010); Johnson, *supra* note 13, at 40.

15. Wald, *supra* note 14, at 2250. Justice Ruth Bader Ginsburg’s experiences at law school and law firms are a well-known example of discrimination. See IRIN CARMON & SHANA KNIZHNIK, *NOTORIOUS RBG: THE LIFE AND TIMES OF RUTH BADER GINSBURG* 33–41 (2015).

16. Wald, *supra* note 14, at 2252; Johnson, *supra* note 13, at 42–43. A group of women law students at New York University School of Law and Columbia Law School filed a complaint and settled when the firms agreed to adopt new guidelines “to ensure the hiring of women associates.” *Id.* After the settlement, the percentage of women lawyers tripled in ten years. *Id.* at 43.

17. Johnson, *supra* note 13, at 41.

18. Wald, *supra* note 14, at 2250; Johnson, *supra* note 13, at 37.

law students.¹⁹ In 2016, women outnumbered men in law school for the first time.²⁰ Today, women comprise a majority of all students at ABA-accredited law schools and a majority of graduating law students.²¹

Moreover, based on the numbers, entry to the legal profession has seemingly reached “equality” with a split of fifty percent men and women in first-year law school classes²² and first-year associate classes.²³ Older generations of women lawyers were told that if they could achieve equal numbers within law schools, then they could achieve equality within the legal profession.²⁴ As Judge Nancy Gertner stated: “We—members of my generation—thought that numbers mattered. Numbers of women in the workforce would keep employers from saying, as they had said to me and my peers, ‘I would love to hire or promote women, but there are simply no qualified women for the job.’”²⁵ As a response, women joined

19. ABA, *Women in the Legal Profession*, in PROFILE OF THE LEGAL PROFESSION (2023) [hereinafter *Women in the Legal Profession*], <https://www.americanbar.org/content/dam/aba/administrative/news/2023/potlp-2023.pdf> [https://perma.cc/32PK-CGAS].

20. Katrina Lee, *Discrimination as Anti-Ethical: Achieving Systemic Change in Large Law Firms*, 98 DENV. L. REV. 581, 590 (2021); Johnson, *supra* note 13, at 37.

21. *Women in the Legal Profession*, *supra* note 19.

22. Ghazala Azmat & Rosa Ferrer, *Gender Gaps in Performance: Evidence from Young Lawyers*, 125 J. POL. ECON. 1306, 1310 (2017). See J.D. ENROLLMENT BY GENDER, *supra* note 10; Lee, *supra* note 20, at 589–90; Deborah L. Rhode, *Diversity and Gender Equity in Legal Practice*, 82 U. CIN. L. REV. 871, 872 (2014) [hereinafter Rhode, *Diversity and Gender Equity*]; Nancy Gertner, *Feminism, Stalled: Thoughts on the Leaky Pipeline*, 2012 MICH. ST. L. REV. 1473, 1474; Wald, *supra* note 14, at 2250–51; Tracy Thomas, *Study Finds that Women Lawyers Make Up Less than 10 Percent of Deal Leaders*, L. PROFESSOR BLOGS NETWORK: GENDER & L. BLOG (June 7, 2022), https://lawprofessors.typepad.com/gender_law/2022/06/study-finds-that-women-lawyers-make-up-less-than-10-percent-of-deal-leaders.html (“Since the 1990s, women have made up roughly half of law school classes.”); see also Justin D. Levinson & Danielle Young, *Implicit Gender Bias in the Legal Profession: An Empirical Study*, 18 DUKE J. GENDER L. & POL’Y 1, 1–2 (2010) (recognizing similar statistic for law school graduates).

23. See Mark H. Alcott, *Achieving Gender and Ethnic Diversity in the Profession*, 78 N.Y. ST. BAR ASS’N J. 5, 5 (2006) (“Today, women are a majority of our law students; a majority of new bar admissions; a majority of those entering our law firms.”); Jason P. Nance & Paul E. Madsen, *An Empirical Analysis of Diversity in the Legal Profession*, 47 CONN. L. REV. 271, 283 (2014); Gertner, *supra* note 22, at 1474.

24. See Carrie Menkel-Meadow, *Women in Law: A Review of Cynthia Fuchs Epstein’s Women in Law*, 8 AM. BAR. FOUND. RSCH. J. 189, 192 n.3 (1983) (book review) (“Just because women are making some inroads in the numbers of law students and professors, they are not necessarily affecting the ways law is studied and practiced.”); Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621, 623, 640 (1994).

25. Gertner, *supra* note 22, at 1475. See also Melissa Juarez, *Hon. Nancy Gertner: U.S. District Judge, District of Massachusetts*, FED. BAR ASS’N: JUD. PROFILES

the legal field in masses. By 1991, women accounted for nearly twenty percent of the practicing bar,²⁶ and by 2000, that percentage increased to twenty-seven percent.²⁷

The charts below show the respective remarkable progression of women in law schools and as associates.²⁸

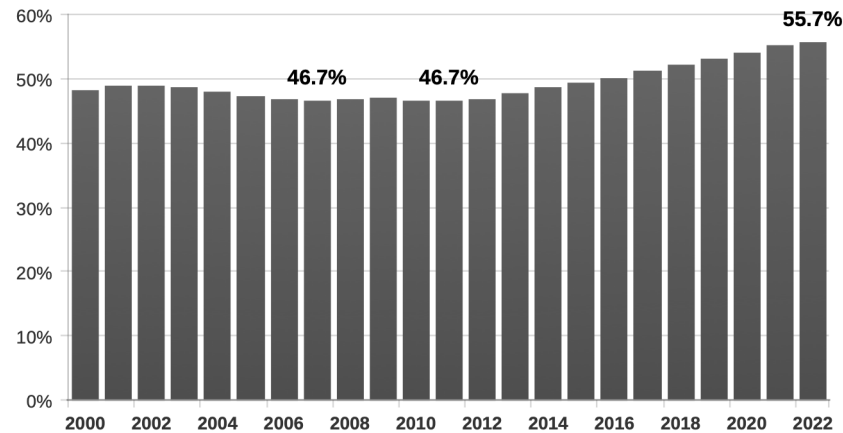


Figure 1. Women as a Percentage of All Law Students: 2000–22

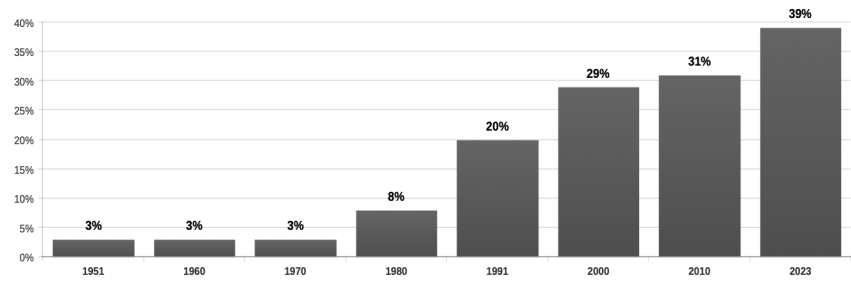


Figure 2. Women in the Legal Profession by Decade: 1951–2023

(2008), <https://www.fedbar.org/wp-content/uploads/2019/10/GertnerMay2008-pdf-3.pdf> [<https://perma.cc/4MTJ-GQTP>] (Judge Gertner graduated law school in 1971).

26. Wald, *supra* note 14, at 2250.

27. *Id.*

28. *Women in the Legal Profession*, *supra* note 19.

B. The Glass Ceiling of Leadership

1. National Overview

Yet, these dramatic increases over time in women attending law schools and joining law firms are not replicated in leadership or in pay equity. Across the United States, Big Law firms remain overwhelmingly white and male, and this holds particularly true at the upper echelon *within* firms.²⁹ While women have made “incremental progress in representation at major U.S. law firms in 2020,” promotion disparity continues to exist.³⁰ In 2019 and 2020, women represented slightly under half of all associates but only one-quarter of partners, according to the National Association for Law Placement (NALP).³¹ The American Bar Association also looked into promotion disparity and found that women represent about 36% of all lawyers, 47% of associate lawyers, 24% of law partners,³² and 30% of executive committee members.³³ The figures are worse for women of color: The percentage of women associates of color was 14.48% and 15.17% in 2019 and 2020, respectfully,³⁴ and, at

29. *Women and Minorities at Law Firms — What Has Changed and What Has Not in the Past 25 Years*, NALP (Feb. 2018), <https://www.nalp.org/0218research> [https://perma.cc/76FV-PRR2]; ABA, 2021 ABA MODEL DIVERSITY SURVEY 8–10 (2021), <https://www.americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/2021-md-survey-2nd-edition.pdf> [https://perma.cc/RM3C-U2TW]; Amanda Robert, *Law Firm Leaders Are Still Mostly White and Male, ABA Diversity Survey Says*, A.B.A. J. (May 16, 2022, 2:35 PM), <https://www.abajournal.com/web/article/law-firm-leaders-are-still-mostly-white-and-male-aba-diversity-survey-says> [https://perma.cc/E52Y-AD68].

30. *Representation of Women and People of Color in U.S. Law Firms in 2020*, NALP (June 2021) [hereinafter *Representation in U.S. Law Firms*], <https://www.nalp.org/0621research> [https://perma.cc/XB7E-TZGU]. See also Kenneth G. Dau-Schmidt, Marc S. Galanter, Kaushik Mukhopadhyaya & Kathleen E. Hull, *Men and Women of the Bar: The Impact of Gender on Legal Careers*, 16 MICH. J. GENDER & L. 49, 95 (2009) (“On an aggregate basis, in 2005, women comprised nearly 30% of the members of the American legal profession, but constituted only 17% of law partners nationwide.”).

31. *Representation in U.S. Law Firms*, *supra* note 30.

32. JOYCE STERLING & LINDA CHANOW, IN THEIR OWN WORDS: EXPERIENCED WOMEN LAWYERS EXPLAIN WHY THEY ARE LEAVING THEIR LAW FIRMS AND THE PROFESSION 3 (2021), <https://www.americanbar.org/content/dam/aba/administrative/women/intheirownwords-f-4-19-21-final.pdf>.

33. Jacqueline Bell, *Law360’s Glass Ceiling Report: What You Need To Know*, LAW360 (Sept. 30, 2021, 3:03 PM), <https://www.law360.com/articles/1418221/law360-s-glass-ceiling-report-what-you-need-to-know>.

34. NALP, 2019 REPORT ON DIVERSITY IN U.S. LAW FIRMS 5 (2019) [hereinafter NALP, 2019 REPORT ON DIVERSITY], https://www.nalp.org/uploads/2019_DiversityReport.pdf [https://perma.cc/3NQ7-7QS2]; *Representation in U.S. Law Firms*, *supra* note 30 (noting that, in 2020, Asian women represented 7.18% of associate attorneys, Black women represented 5.1%, and Latinx women represented 5.64%).

the partner level, only 3.45% in 2019 and 3.79% in 2020.³⁵ The chart below shows the progression of women as equity partners in the last sixteen years since NALP started to measure it.³⁶ As we have seen, women have been graduating law school in virtually equal numbers for over twenty years and the percentage of women overall in the legal profession reflects these important gains. Yet the percentage of women at the leadership level has barely moved. In fact, at the one percent-per-year rate of increase reflected in the last five years, it will take more than thirty years to have law firm leadership reflect the profession as a whole.

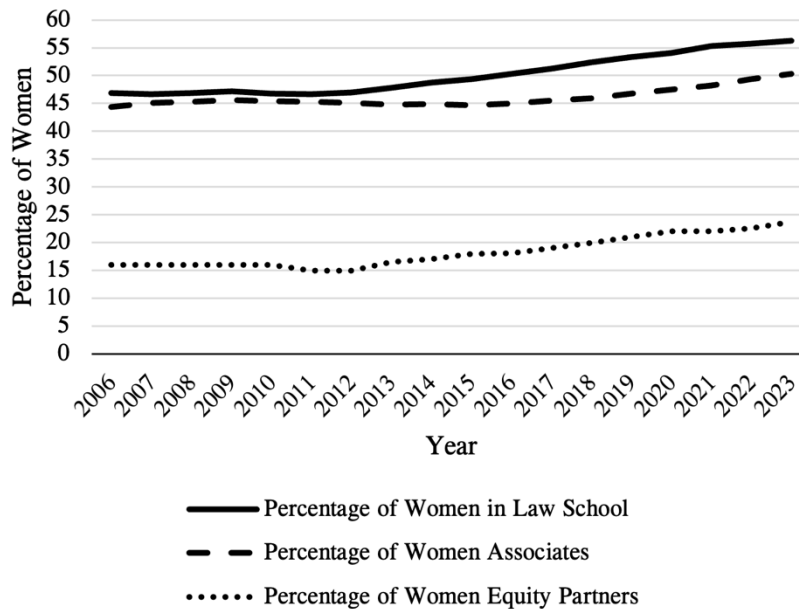


Figure 3. Percentage of Women in Law

While women have been entering law school in the same numbers as men, the research shows that women are leaving the profession at

35. NALP, 2019 REPORT ON DIVERSITY, *supra* note 34, at 6; *Representation in U.S. Law Firms*, *supra* note 30 (showing that, in 2020, Asian women represented 1.62% of partners, Black women represented 0.8%, and Latin women represented 0.9%).

36. Data taken from: *Women in the Legal Profession*, *supra* note 19; NALP, 2023 REPORT ON DIVERSITY IN U.S. LAW FIRMS (2023), <https://www.nalp.org/uploads/Research/2023NALPReportonDiversityFinal.pdf> [<https://perma.cc/277Q-3KCB>]; Staci Zaretsky, *Women Continue To Make History When It Comes to Law School Enrollment*, ABOVE L. (Jan. 4, 2024, 12:12 PM), <https://abovethelaw.com/2024/01/women-continue-to-make-history-when-it-comes-to-law-school-enrollment/> [<https://perma.cc/7VWV-TB5Y>].

alarming rates.³⁷ “The attrition of experienced women lawyers reverberates throughout the profession and heavily impacts law firms and legal departments.”³⁸ The loss of these experienced women lawyers also “affects the retention of junior women lawyers who look to veteran women lawyers as role models, mentors, and proof that success is possible.”³⁹ To understand why attrition rates among women are so high, researchers have found two of the most prominent explanations to be leadership disparities and pay disparities.⁴⁰ These factors can work in tandem, or separately: Even if a woman secures a leadership position at her firm, the pay disparity may persist, making the post untenable.⁴¹ The result? Women leave their firms, or worse, the legal field.

37. DESTINY PEERY, THE NAT’L ASS’N OF WOMEN LAWS., 2020 SURVEY REPORT ON THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS (2020) [hereinafter PEERY, 2020 REPORT]; Fiona M. Kay, Stacey L. Alarie & Johnes K. Adjei, *Undermining Gender Equality: Female Attrition from Private Law Practice*, 50 LAW & SOC’Y REV. 766, 767 (2016).

38. STERLING & CHANOW, *supra* note 32, at 1; Thomas, *supra* note 22 (“Attrition between entry to law firms and partnership results in women comprising 20 [to] 25 percent of partners.”). For additional studies finding women have been leaving the legal profession for years see Joan Brockman, *Leaving the Practice of Law: The Wherefores and the Whys*, 32 ALTA. L. REV. 116, 123 (1994); Fiona M. Kay, *Flight from Law: A Competing Risks Model of Departures from Law Firms*, 31 LAW & SOC’Y REV. 301, 302 (1997); Fiona M. Kay & John Hagan, *Building Trust: Social Capital, Distributive Justice, and Loyalty to the Firm*, 28 LAW & SOC. INQUIRY 483, 509–10 (2003); and Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 LAW & SOC. INQUIRY 289, 308 (1989) [hereinafter Menkel-Meadow, *Exploring a Research Agenda*].

39. STERLING & CHANOW, *supra* note 32, at 1.

40. *Id.* at 2–4, 8, 26–28; Lee, *supra* note 20, at 591. *See also* Laura Leopard, *Why Are Women Leaving Big Law and What Can Law Firms Do About It?*, JD SUPRA (July 25, 2022), <https://www.jdsupra.com/legalnews/why-are-women-leaving-big-law-and-what-6682026> (“74 percent [of women] said that the trajectory of their careers drove them to leave their current firms, a signal that many women feel shut out of advancement opportunities. This is although more than 60 percent of the women we surveyed said they had wanted to become partner early in their careers.”). More recent studies examining pay differences include Mary C. Noonan, Mary E. Corcoran & Paul N. Courant, *Pay Differences Among the Highly Trained: Cohort Difference in the Sex Gap in Lawyers’ Earnings*, 84 SOC. FORCES 851, 853 (2005) (using data from the University of Michigan Law School) and the very impressive series “After the JD” sponsored by the American Bar Foundation examining lawyers for the last twenty years. *See generally* ROBERT L. NELSON, RONIT DINOVITZER, BRYANT G. BARTH, JOYCE S. STERLING, DAVID B. WILKINS, MEGHAN DAWE & ETHAN MICHELSON, THE MAKING OF LAWYERS’ CAREERS: INEQUALITY AND OPPORTUNITY IN THE AMERICAN LEGAL PROFESSION (2023). *See also* Elizabeth H. Gorman, *Gender Stereotypes, Same-Gender Preferences, and Organizational Variation in the Hiring of Women: Evidence from Law Firms*, 70 AM. SOCIO. REV. 702 (2005).

41. Hersch & Meyers, *supra* note 8, at 932–33 (“The ABA summit on ‘Achieving Long-Term Careers for Women in the Law’ suggests three possible explanations for women’s exodus from the legal profession: the gender pay gap,

We focus on law firms in this Article because that is where most law students start⁴² and where the gender pay and leadership gap is most significant.⁴³ Many law students are conditioned to pursue Big Law—the most prestigious and high-paying jobs. The thinking becomes somewhat circular: Big Law ranks at the top of most law students’ goals exactly because it is “everyone’s” dream.⁴⁴ In addition to six-figure salaries right out of law school,⁴⁵ many law students desire Big Law’s extensive

dissatisfaction with work/life balance, and unconscious bias.”). Again, this is not a new problem but rather one that continues to persist regardless of decades of equal numbers of men and women joining the profession. See Fiona M. Kay & John Hagan, *The Persistent Glass Ceiling: Gendered Inequalities in the Earnings of Lawyers*, 46 BRIT. J. SOCIO. 279 (1995); Fiona M. Kay & John Hagan, *Raising the Bar: The Gender Stratification of Law-Firm Capital*, 65 AM. SOCIO. REV. 728 (1998).

42. *Employment Outcomes as of April 2022 (Class of 2021 Graduates)*, A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2022/class-2021-online-table.pdf (April 18, 2022). Over fifty percent of 2021 graduates took firm positions, while approximately ten percent each began working in government, clerkships, and business, whereas almost eight percent went into public interest. *Id.*

43. For example, women are making significant strides in the judiciary (one-third of federal judges and over forty percent of state high-court judges) and as law school deans (forty-three percent). Ian Pisarcik, *Women Outnumber Men in US Law School Classrooms, but Statistics Don’t Tell the Full Story*, JURISTNEWS (Jan. 17, 2024, 2:28 PM), <https://www.jurist.org/commentary/2024/01/women-outnumber-men-in-us-law-school-classrooms-but-statistics-dont-tell-the-full-story/> [<https://perma.cc/ZV7R-T47Y>]. It is the law firms that seem to be the most resistant to change. *Id.*

44. Alexa Z. Chew & Rachel Gurvich, *Saying the Quiet Parts Out Loud: Teaching Students How Law School Works*, 100 NEB. L. REV. 887, 898 (2022) (“The first category is wealthy schools that place most of their students with big law firms and from which most of the professors in the legal academy are hired. These schools have the money to innovate but no motivation to change their basic structure, which serves the corporations and firms that many of their graduates work for.”). See, e.g., Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994) (outlining challenges for women and minorities in law school); Debra Schleef, *Thinking Like a Lawyer: Gender Differences in the Production of Professional Knowledge*, 18 GENDER ISSUES 69 (2001). See also Menkel-Meadow, *Exploring a Research Agenda*, *supra* note 38, at 313–14.

45. High salaries are especially attractive when graduating law students are facing crippling loans of upwards of \$100,000:

A recent report by the American Bar Association Young Lawyers Division and AccessLex Institute shows student loan debt is common and burdensome for young lawyers -- about 90 percent of those surveyed said their debt impacted their advancement towards major life milestones, and a majority of borrowers said they are anxious, stressed, regretful or guilty due to their loan debt.

Alexis Gravely, *Impact of Student Loan Debt on Young Lawyers*, INSIDE HIGHER ED (Sept. 22, 2021), <https://www.insidehighered.com/news/2021/09/23/aba-report-shows-impact-law-school-debt-young-lawyers>. Young lawyers “ow[e] an average of roughly \$108,000 in J.D. loans and \$130,000 in all loans combined at graduation.” ABA YOUNG

resources, prestige, multiple geographic locations, unique cases, lateral options, and job assurances. Other students, attorneys, law schools, media outlets, family members, and friends suggest students should strive for Big Law, where, as they are told, they will find money, power, and security. Yet, telling law students that there will be equal opportunities for advancement if they pursue Big Law is a fallacy.⁴⁶ These firms have not yet had an incentive to change the structures and business models that serve them, and the low numbers of women and minorities in law firm leadership demonstrate this.⁴⁷

2. Our In-Depth Study in Milwaukee, Wisconsin

How do the numbers in smaller markets or smaller firms compare to these national statistics? We worked with the Institute of Women's Leadership⁴⁸ (IWL) at Marquette University (of which Professor Schneider was the Director) to create a survey⁴⁹ to determine law firm demographics across Milwaukee including progression, rank, and leadership roles. After initially administering the survey in 2020, we published IWL's first white paper in 2021, commonly known as "LFEI" (Law Firm Equity Initiative), reporting on the state of gender equity in Milwaukee law firms.⁵⁰ Overarchingly, the study concluded that while

LAWS. DIV. & ACCESSLEX INST. CTR. FOR LEGAL EDUC. EXCELLENCE, STUDENT DEBT: THE HOLISTIC IMPACT ON TODAY'S YOUNG LAWYER 4 (2021), https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2021-student-loan-survey.pdf [<https://perma.cc/Z43D-GP47>]. Also, roughly eighty percent of "borrowers reported that salary factored more heavily into their job selection than anticipated. . . . Nearly a third of the sample indicated their position was less focused on public service . . . than intended when they started law school." *Id.* at 8.

46. In fact, one recent study showed that there appeared to be no salary benefit for superior academic performance for women. Milan Markovic & Gabriele Plickert, *The Gender Pay Gap and High-Achieving Women in the Legal Profession*, 48 LAW & SOC. INQUIRY 561, 578 (2023) ("[Women] private practitioners receive little benefit from superior performance. They earn less than high-achieving [men] . . . and no more than lower-achieving [men] . . . under all models.").

47. We note that while this Article focuses on gender, the data for minority lawyers, particularly for women of color, are even more disappointing.

48. *About Us*, MARQ. UNIV.: INST. FOR WOMEN'S LEADERSHIP, <https://www.marquette.edu/womens-leadership/about.php> [<https://perma.cc/GTZ4-BXSM>].

49. Other studies have collected qualitative data that support and illuminate our quantitative data. In particular, the "After the JD" longitudinal study provides support for many of these conclusions. See Bryant G. Garth & Joyce S. Sterling, *Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews*, 31 GEO. J. LEGAL ETHICS 123 (2018).

50. ANDREA KUPFER SCHNEIDER, INST. FOR WOMEN'S LEADERSHIP MARQUETTE UNIV., LAW FIRM EQUITY INITIATIVE (2021) [hereinafter SCHNEIDER, LFEI 2021], https://www.marquette.edu/womens-leadership/documents/iwl-law-firm-equity-initiative_white-paper_2021-03-08-report.pdf [<https://perma.cc/CE6K-JPRP>].

women have achieved parity in law school and junior associate classes, women have yet to make corresponding strides as senior associates, nonequity partners, and law firm owners.⁵¹

In 2021, we conducted a second LFEI study, published as our second white paper in 2022, to continue to measure the progress of women in the Milwaukee legal community in the same areas.⁵² This study also provided new compensation data and publicly listed participating law firms.⁵³ The survey requested data regarding the number of men and women at each level of the firm, including associates, partners, compensation committees, and hiring committees.⁵⁴ The survey asked pointed questions, including how many of the higher-level women lawyers began with the firm as junior associates, how many women are full time, and how many women have served as the firm's top managing partner.⁵⁵ Finally, the 2022 survey ended with multiple-choice questions regarding compensation credit and origination credit.⁵⁶

In both years, the survey was sent to the forty-nine law firms in the Milwaukee area who employed ten or more attorneys, including at least one woman attorney.⁵⁷ In 2021, twenty-nine law firms participated—a 59.2% response rate.⁵⁸ And in 2022, thirty-two law firms participated—a 65% response rate.⁵⁹ Additionally, in 2022, all of the top fifteen law firms in Milwaukee responded to the survey.⁶⁰ Given the strong

51. *Id.* at 5.

52. ABIGAIL BOGLI, HANNAH CHIN & ANDREA KUPFER SCHNEIDER, INST. FOR WOMEN'S LEADERSHIP MARQUETTE UNIV., LAW FIRM EQUITY INITIATIVE (2022) [hereinafter BOGLI, CHIN & SCHNEIDER, LFEI 2022], https://www.marquette.edu/womens-leadership/documents/lawfirmequityinitiative-report2_2022-04-22-revised_final.pdf [<https://perma.cc/SQ32-P3VS>].

53. *Id.* at 9. The complete 2022 LFEI Survey is attached as Appendix A.

54. *Id.* at 1.

55. *Id.* at 5–6. “A managing partner is a senior attorney on a management team who is often responsible for the day-to-day operations, business plans, policies, and profitability of the firm.” Kamron Sanders, *How To Become a Managing Partner at a Law Firm*, NAT'L L. REV. (Sept. 29, 2022), <https://www.natlawreview.com/article/how-to-become-managing-partner-law-firm> [<https://perma.cc/7M9X-3D72>]. “Like partners, managing partners have an ownership interest in the firm.” *Id.*

56. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 8.

57. *Id.* at 1; SCHNEIDER, LFEI 2021, *supra* note 50, at 1.

58. SCHNEIDER, LFEI 2021, *supra* note 50, at 1.

59. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 1.

60. *Id.* at 9; Barbara Zaferos, *Largest Milwaukee-Area Law Firms*, MILWAUKEE BUS. J. (Jan. 22, 2021, 5:00 AM), <https://www.bizjournals.com/milwaukee/subscriber-only/2021/01/22/largest-milwaukee-area-law-firms.html>. It is important to note that many of the firms who responded to the survey maintain offices located both inside and outside of Milwaukee; however, the data we collected focused solely on the firms' numbers in their Milwaukee offices.

response, the data provides a good representation of the current state of the demographics of Milwaukee's legal field.⁶¹

After receiving the data from each firm, we analyzed trends in the two years of survey data, which are reported below. In addition to general trends, we analyzed whether firm size (small, midsize, or large)⁶² was correlated with women representation within the categories we researched. Notably, many respondents completed both the 2020 and 2021 surveys, which allowed us to compare those yearly numbers and detect any changes.

*a. Standard Survey Questions*⁶³

Total Representation. Across all thirty-two Milwaukee firms that participated in the 2022 study, there were a reported 1,390 attorneys in law firms.⁶⁴ Of those attorneys, 67.2% (934) were men and 32.8% (456) were women.⁶⁵

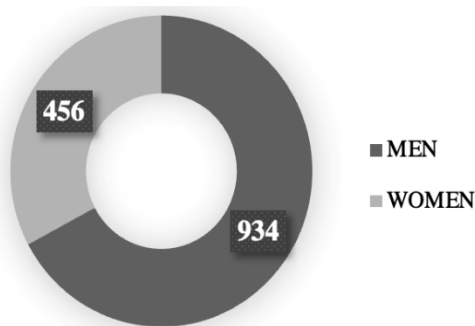


Figure 4. Representation Breakdown by Gender

61. In fact, because we automatically excluded several firms with no women at all, this data presents a more favorable composite picture of the profession in Milwaukee.

62. For purposes of our study, small firms are those with one to twenty attorneys; medium firms are those with twenty-one to sixty attorneys; and large firms are those with more than sixty-one attorneys.

63. The standard survey questions are in Appendix A.

64. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52. Interestingly, the LFEI data on Big Law appears more male than State Bar membership as a whole. For example, the Wisconsin State Bar reports that there are 5,281 lawyers in Milwaukee County total, of which 60.2% (3,179) are men and 38.3% (2,025) are women as of October 1, 2024. See *Membership Statistics*, ST. BAR WIS., <https://www.wisbar.org/aboutus/overview/pages/member-statistics.aspx> [https://perma.cc/55X8-AZ23] (Oct. 1, 2024). In the ring counties around the city (where some of the studied lawyers could also live) the percentage of male lawyers rises but still does not reach the Big Law numbers. In Waukesha County, the total number of lawyers is 1,565: 64.3% (1,007) men and 34.6% (541) women. See *id.* In the counties of Dodge, Ozaukee, and Washington, the total number of lawyers is 709, 66.4% (471) men and 32.6% (231) women. See *id.*

65. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 2.

*Equity Partners.*⁶⁶ At the aggregate level, we found that the average percentage of women equity partners at firms in Milwaukee was 21.8%.⁶⁷ This number varied slightly depending on the size of the law firm—small firms averaged 22.8%, medium firms averaged 19.8%, and large firms averaged 21.7%.⁶⁸ It is important to note that, like all averages, these numbers do not capture the distribution created by the individual data points. For example, at a quarter of firms (eight of thirty-two), one (or fewer) in ten equity partners were women.⁶⁹ On the other hand, at twelve of thirty-two firms, one (or more) in four equity partners were women.⁷⁰ In other words, firms can vary widely—and women should know this in advance.

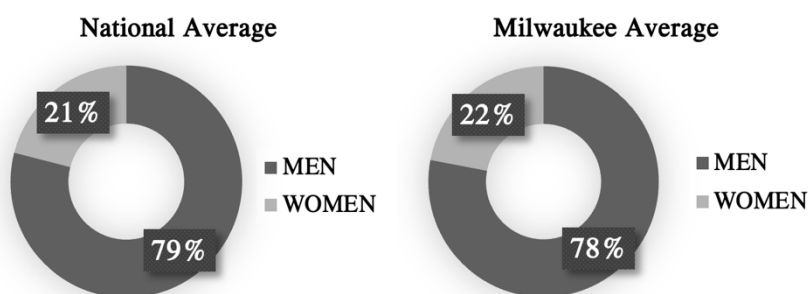


Figure 5. *Equity Partners by Gender*

Career Progression. To understand the scope of the attrition problem in Milwaukee, we asked the firms specific questions regarding representation in each associate and partner class. Reports from both 2021 and 2022 show that as rank increases, the number of women in those positions decreases.⁷¹

Women account for 50.7% of junior associates at Milwaukee firms.⁷² This percentage holds relatively steady throughout the associate ranks—an average of 52.8% of mid-level associates and 47.8% of senior associates.⁷³ However, as we move to the partner level, the percentage

66. As an equity partner, a lawyer shares in the ownership of the law firm and reaps the financial benefits of the profits made.

67. BOGLI, CHIN & SCHNEIDER, *supra* note 52, at 3.

68. *Id.*

69. *Id.* at 4.

70. *Id.*

71. *Id.* at 6.

72. *Id.*

73. *Id.*

decreases; women represent 37.2% of non-equity partners and 21.8% of equity partners.⁷⁴ The same pattern exists in the progression of tenure.

Of the attorneys in Milwaukee that have been at their law firm for less than 5 years, 45.6% are women. Similar to the 2021 Report . . . the percentage of female attorneys drops as the number of years increases: the percentage of women remaining at the firm for 5–9 years [is] 37.6%. [The percentage of female attorneys who stay at the same firm for 10–14 years and more than 15 years plummets to 30.3% and 19.0% respectively.] Interestingly, the range in percentage of female attorneys at the firm for 15+ years is quite large.⁷⁵

Firms varied widely in retaining women at the fifteen-year mark with the overall range being 0–66.7% of the total number of attorneys.⁷⁶ Broken down even further, that range is 0–66.7% for small firms, 0–41.7% for medium firms, and 12.9–27.8% for large firms.⁷⁷ Again, this is something worth investigating in advance for any given law firm being considered by a future hire. And our regression analysis shows that a firm's ability to retain women is also linked to salary. The number of women who stay at a firm for fifteen or more years is 54% correlated with having women in the top echelon of a firm's earners.⁷⁸ This is particularly interesting since many assume that lateral moves result in more money. This analysis would seem to show that staying with the same firm can also result in more money.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* While we do not know what is behind the range of numbers, we can hypothesize that some of the small firms with very high numbers of women are women-started or women-run firms with the goal of keeping women.

78. Regression analysis on file with authors.

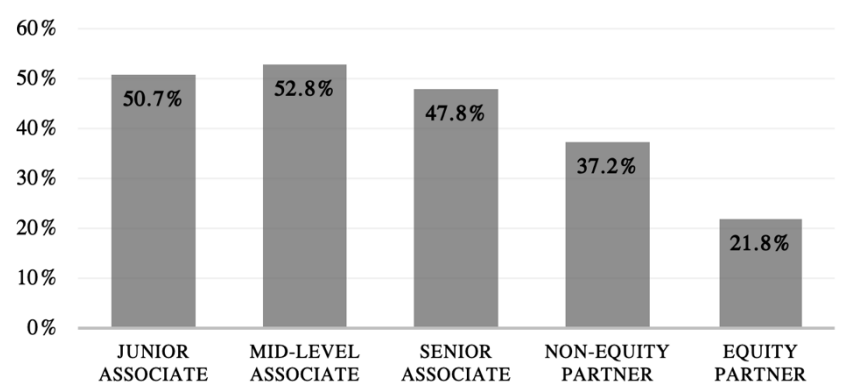


Figure 6. Women Attorney Representation by Role

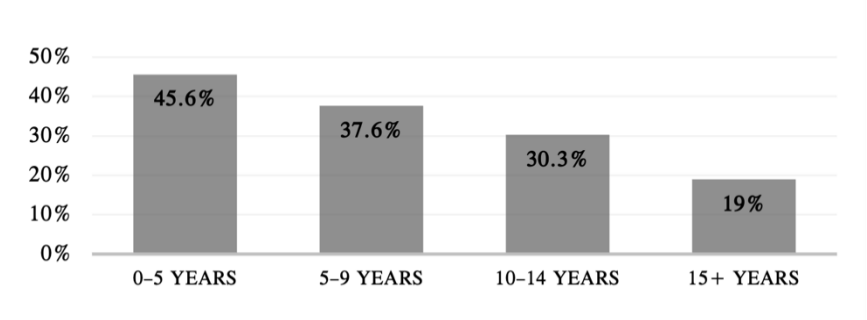


Figure 7. Women Attorney Representation by Years of Service

b. Additional Questions⁷⁹

The data recorded based on total representation, career progression, and equity partners was just the tip of the iceberg. We supplemented these foundational survey questions with three questions about compensation and origination credit that went further in depth to analyze what was happening with attrition.

*Leadership Roles.*⁸⁰ Our results show that law firms have focused diversity efforts first on the hiring committee—the most visible committee to law students. In both 2021 and 2022, hiring committees had the most women representation of all the leadership roles included in the survey. Overall, women made up 43.3% of hiring committees in

79. These additional questions are available in Appendix A.

80. Examples of leadership roles can be serving as a practice group leader, participation in a committee, or being elected as the firm’s managing partner.

Milwaukee firms in 2022.⁸¹ The percentage of women on hiring committees at large firms was even greater, at 55.3%, while the percentage of women on hiring committees at medium-sized firms was 25.9% and 44% at small firms in 2022.⁸² Moreover, women associates are often utilized for on-campus interviews, giving law firms the appearance of more diversity.⁸³

Yet other, less visible but more powerful, leadership opportunities have lagged. For example, women accounted for only 16.4% practice group leaders in 2021 and 22.3% in 2022.⁸⁴ Compensation committees were 26.9% and 28.2% women in 2021 and 2022, respectively.⁸⁵ Looking at the statistic by law firm size, women represented 33% of small firm compensation committees, 21% at medium firms, and 31% at large firms.⁸⁶ Finally, out of the thirty-two firms that responded to the survey, thirteen of them had a woman managing partner, firm president, or the equivalent in the last decade.⁸⁷

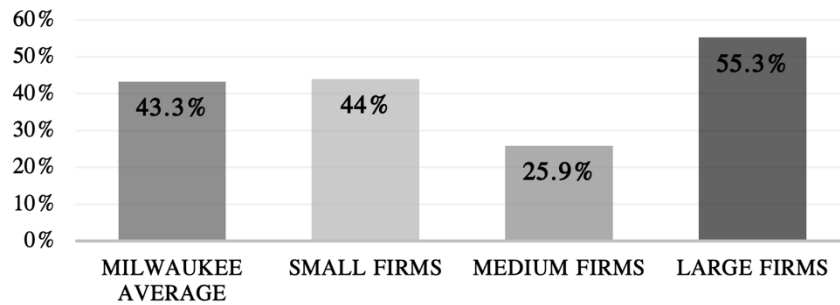


Figure 8. 2022 Hiring Committee Members

81. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 5.

82. *Id.*

83. Of course, this too can harm women who are often tapped for visibility but then not given credit for this work. *See* LINDA BABCOCK, BRENDA PEYSER, LISE VESTERLUND & LAURIE WEINGART, THE NO CLUB: PUTTING A STOP TO WOMEN'S DEAD-END WORK 41–42 (2022) (noting how women are overrepresented in providing “service” to academic institutions, like committee work or mentoring students, despite such service having “all the hallmarks of non-promotable work”).

84. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 5.

85. *Id.*

86. *Id.*

87. *Id.*

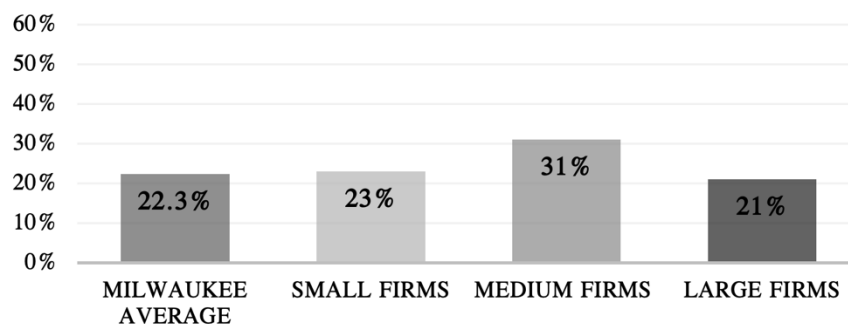


Figure 9. 2022 Practice Groups

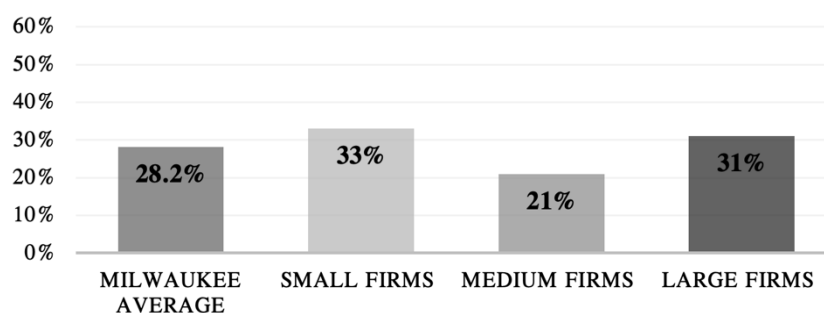


Figure 10. 2022 Compensation Committee Members

Compensation Determination. To illuminate the 2021 data, the 2022 report added a question on compensation, since many have argued that the method of compensation and the transparency thereof impacts gender equity.⁸⁸ “The data shows [us] that the most common partner compensation method that Milwaukee firms use is a combination of an objective formula and subjective evaluation by a compensation committee (48.4%) or an objective formula only (32.3%).”⁸⁹ There seems to be a close split regarding the extent to which partner compensation data is transparent. “A majority of firms (54.8%) in Milwaukee share partner compensation among all partners; while 45.2% of Milwaukee firms share such data only with a specific group of people, such as a leadership group (42.0%) or only individuals making compensation decisions (3.2%).”⁹⁰

88. See, e.g., Barbara Donn, Christine Cahill & Meghan Hennessy Mihal, *Examining Pay Differentials in the Legal Field*, 3 IND. J.L. & SOC. EQUAL. 216, 231 (2015) (arguing that shifts from lockstep compensation to “merit-based” pay have led to more subjective, and discriminatory, decisions regarding pay).

89. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 8.

90. *Id.*

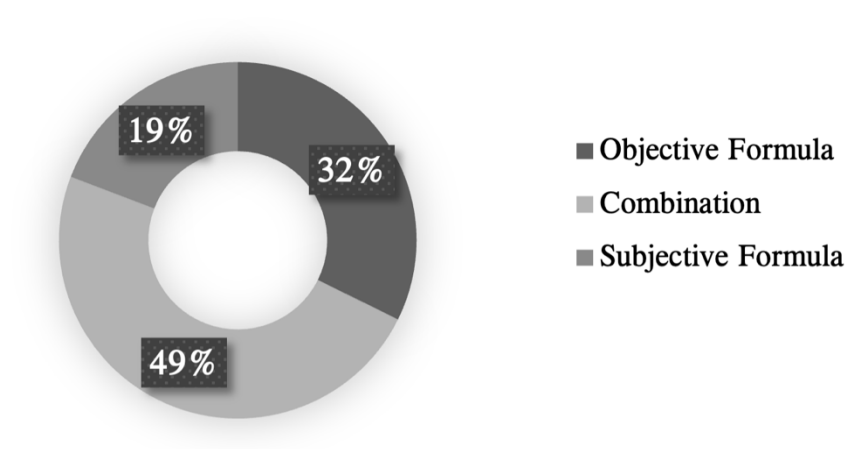


Figure 11. Partner Compensation Methods

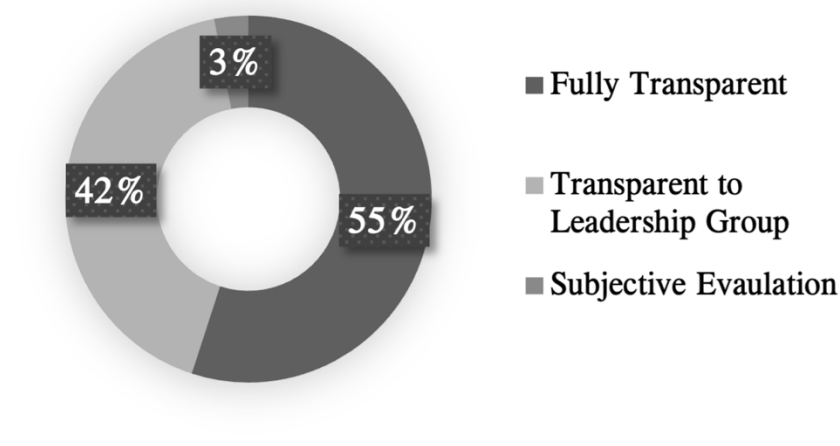


Figure 12. Partner Compensation Data Transparency

Top Earners. In the second year of our study, we also focused on what was happening at the top echelon of earners in a law firm. Logically, this group would be comprised of full equity partners who had already committed extraordinary time and effort to their respective law firms. What kind of gender differences would we find? As we outlined in the white paper:

Another way of measuring success is by looking at the top earners in each firm. This was examined in three ways. First, the percentage of attorneys who achieve [top earner status] was

reviewed. Of all women attorneys included in [the 2022] survey, 6.8% of women were in the top fifth quintile while more than double that number— 15.5% —were men. Second, the overall percentage of the top fifth earners by firms was reviewed. On average, 17.6% of this quintile are women and 82.4% are men. . . . Finally, each firm’s representation could be examined. Notably, a majority of law firms (51.6%) do not have any women in the top fifth of earners.”⁹¹

In some ways, this was the most distressing of all our findings. Even when women have committed themselves to excellence and success in a law firm, their likelihood of being paid equally and achieving that top echelon of earnings is low.⁹²

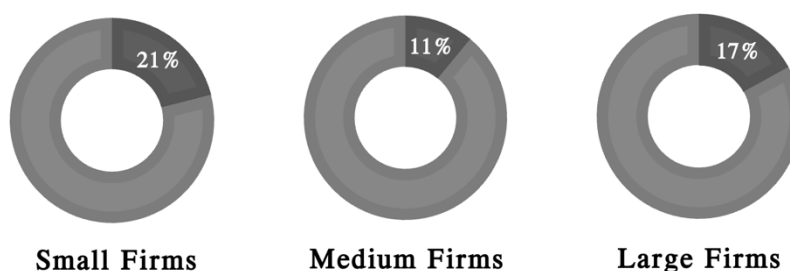


Figure 13. Representation of Women Amongst Top Earners by Firm Size

Our study highlights the poor representation of women in leadership positions and positions of monetary power in law firms. Not coincidentally, other studies have shown that unequal pay and lack of advancement opportunities are among the biggest reasons why women leave law firms.⁹³ In this next section, we turn to what law students can

91. *Id.* at 7.

92. It is interesting to note that medium-sized law firms seemed to do worse on many measures than either large or small firms. We do not have a conclusion but more questions: Perhaps in small firms, leadership must be rotated to share the burden, or it is harder to hide inequity? Perhaps in large firms, more lockstep salaries or more objective criteria is used for compensation? Perhaps a more national profile and more national clients demand more leadership equity? Additional research is needed here.

93. Elizabeth Olson, *Pay Gap, Lack of Credit Push Women Out of Law Firms, Study Says*, BLOOMBERG L. (Nov. 14, 2019, 5:01 AM), <https://news.bloomberglaw.com/business-and-practice/pay-gap-lack-of-credit-push-women-out-of-law-firms-study-says>. Women may not leave one large law firm for another:

According to the company’s industry-wide data, women between the ages of 25 and 30 have been exiting top 200 law firms at a “very high rate.” But like

do about this and how they can research their own career options more effectively.

their male counterparts, these young women associates mainly “traded one top law firm for another.” Women lawyers in their 30s and older, however, were far more likely to leave Big Law altogether. A whopping 61% of survey respondents moved to smaller firms, opting for employers outside the Am Law 200. About 20% of the respondents took non-lawyer jobs or were not working at all. The rest moved to academia, the government, in-house or (least popular of all) became solo practitioners.

Jenna Greene, *Don't Blame Baby: Survey Finds Most Women Quit Big Firms over Culture, Not Family*, REUTERS (July 21, 2022, 3:26 PM), <https://www.reuters.com/legal/legalindustry/dont-blame-baby-survey-finds-most-women-quit-big-firms-over-culture-not-family-2022-07-21/>. One study noted reasons why women may move out of the Big Law space:

It's interesting to note that approximately 65 percent of the women associates who left a top 200 firm did not return to other large law firms. One survey respondent said, “Fundamentally, large law firms were built to serve white male lawyers and their white male clients. The business model is one that requires lawyers to prioritize work above everything else in a way that has simply become untenable and unappealing for many. Efforts to promote and support women (and other underrepresented groups) will always fall short as long as the billable hour and 24/7 availability are measures of success.”

See Leopard, *supra* note 40. Similarly:

As one survey taker noted: “I was tired of having to fight with others (primarily men) for billing credit, for prime assignments, for marketing opportunities, and all things legal. I did it for over 30 years, and I was successful, but, wow, was it was exhausting.” Another added: “Having a mentor—someone who cared about my career, well-being, et cetera—would have made a huge difference. I worked at a top 5 law firm, and there were no mentors for any of us. All the women that I started with left practice, except one who made partner and is thriving.” . . . The most frustrating work aspect for our respondents was a perception that their law firms did not support them, followed closely by the lack of work-life balance. As one woman told us, “female attorneys have to work harder to achieve the same goals and show twice the commitment of their male counterparts. Work-life balance is more difficult to attain for female attorneys because they often have more obligations both inside and outside of work without the same amount of support.” . . . “Reasons I am considering leaving a big law firm include being the only woman on my practice group team, not feeling supported or sponsored by the (male) partner on my team, and burnout from gender bias in everything from daily microaggressions (being interrupted and talked over by male colleagues in meetings, having my ideas taken by male colleagues without credit attributed to me) to paying a social cost (e.g., becoming unlikeable, being called ‘aggressive’) for advocating for my own promotion and compensation increase.”

Women Leaving Law, LEOPARD SOLS. (2022), <https://www.leopardsolutions.com/wp-content/uploads/Women-Leaving-Law-Final.pdf> [<https://perma.cc/7A5J-929S>].

II. ACTIONS LAW STUDENTS CAN TAKE

We, as new lawyers and a professor who has guided new lawyers for decades, are each deeply aware of the challenges women face both in law school⁹⁴ and at law firms. We believe that law students should enter the field with a clear understanding of what lies ahead. We outline here strategies for achieving this.

A. How the Questions Asked by Students Can Shape Firms

Law students have a unique position in this dilemma, as law firms go to great lengths to attract the best of them. Whether it is fancy dinners, summer outings, or branded swag, firms compete for law students' attention as they clamor to secure the best associates they can. If law students can take advantage of this position and start putting pressure on law firms, changes in the legal field may follow. It is unsurprising, and career planning offices confirm, that law school candidates are expected to come with a list of questions when they interview at firms. This practice, like in many fields, demonstrates their interest in the firm, but can also allow candidates to gather information about which firms align most with their ideals, beliefs, and expectations. To the firm, these questions provide valuable insight into what candidates seek and what attributes—culture, compensation, career path, and alike—candidates prioritize.

Throughout the decades, certain questions became the “key questions” or the most asked question from candidates. In the late 1990s, that question concerned maternity leave policies.⁹⁵ Following this

94. In this Article, we chose not to discuss at length the issues that are present within law school—mostly because they seem to exhibit the very same flaws that contribute to gender inequality at law firms.

[L]aw schools are in some ways the embodiment of inhospitable traditional and rigid institutions featuring many forms of subtle, structural discrimination, which systemically discourages women law students from class participation, active engagement with law school life, effective performance and success. [Women] law students continue to suffer from insufficient access to informal mentorship and networking with professors outside of the classroom, are often disillusioned by legal education's competitive rat race and, perhaps most strikingly, feel alienated by law schools and the culture of legal education. Study after study confirms women law students' feelings of alienation, disillusion, and discontent with law schools and concludes that legal education is failing women.

Eli Wald et al., *Looking Beyond Gender: Women's Experiences at Law School*, 48 TULSA L. REV. 27, 30–31 (2012) (footnotes omitted); see also Guinier, Fine & Balin, *supra* note 44.

95. See Mary Jane Mossman, *Lawyers and Family Life: New Directions for the 1990's* (pt. 2), 2 FEMINIST LEGAL STUDS. 159, 173–74 (1994).

increase in questions about the treatment of pregnant attorneys, firms began to focus on implementing maternity leave and then broader parental leave policies.⁹⁶ Similarly, in the 2000s, the key question was about pro bono work. For example, a Harvard Law School “Pro Bono Guide” emphasized asking about pro bono opportunities at firms during the interview process.⁹⁷ The Guide stated: “If [students] do not ask at all, recruiters and firms may conclude that pro bono is not important. As a result, they may decrease their commitment to pro bono work.”⁹⁸ Students asking about maternity leave and pro bono commitment in turn caused law firms to realize the importance of these issues to their candidates, which in turn resulted in increased commitment to those causes. And, most recently, law student efforts led some law firms to drop mandatory arbitration clauses in their employment agreements for all employees, including associates.⁹⁹ After protests, and then requests from law school career service offices to disclose policies in advance, many top law firms changed their employment practices. We suggest law school career service offices coach students to use these same tactics to advance gender equity.¹⁰⁰

96. See, e.g., N.Y.C. BAR, COMM. ON WOMEN IN THE PRO., PARENTAL LEAVE POLICIES AND PRACTICES FOR ATTORNEYS 6 (2007), https://www.nycbar.org/pdf/report/Parental_Leave_Report.pdf [<https://perma.cc/7N8U-NSK5>] (“This rising interest in work/life balance is one of the major trends now affecting attorney recruitment.”); Lisa Giddings, Donna Anderson & Kathryn Birkeland, *Is It Profitable To Offer Paid Leave? A Case Study of the Legal Profession*, 16 J. LEGAL, ETHICAL & REGUL. ISSUES 73, 73 (2013) (“Law firms . . . have adopted paid parental leave policies in order to attract and retain high performers.”); Christen Linke Young, *Childbearing, Childrearing, and Title VII: Parental Leave Policies at Large American Law Firms*, 118 YALE L.J. 1182 (2009) (surveying the state of parental leave policies and noting the evolution of maternity leave policies into parental leave policies).

97. “As you speak with prospective employers, do not underestimate the importance of asking about pro bono opportunities.” KEVIN LAPP & ALEXA SHABECOFF, PRO BONO GUIDE: AN INTRODUCTION TO PRO BONO OPPORTUNITIES IN THE LAW FIRM SETTING 20 (2d ed. n.d.), <https://hls.harvard.edu/wp-content/uploads/2022/08/guide-pro-bono-1.pdf> [<https://perma.cc/MF36-SGUV>]. The Guide then goes on to list sample interview questions regarding pro bono for students to use. *Id.* at 20–21.

98. *Id.* at 20.

99. Staci Zaretsky, *Elite Law Schools Demand that Biglaw Firms Disclose Whether Students Will Be Forced To Sign Arbitration Agreements*, ABOVE L. (May 14, 2018, 1:26 PM), <https://abovethelaw.com/2018/05/elite-law-schools-demand-that-biglaw-firms-disclose-whether-students-will-be-forced-to-sign-arbitration-agreements/> [<https://perma.cc/SDC5-PE9D>]; Angela Morris, *Why 3 BigLaw Firms Ended Use of Mandatory Arbitration Clauses*, A.B.A. J. (June 1, 2018, 12:15 AM), https://www.abajournal.com/magazine/article/biglaw_mandatory_arbitration_clauses.

100. *Wage Transparency Works: Reduces Gender Pay Gap by 7 Percent*, COLUM. BUS. SCH. (Dec. 5, 2018), <https://business.columbia.edu/press-releases/cbs-press-releases/wage-transparency-works-reduces-gender-pay-gap-7-percent> (noting that Denmark’s 2006 Act on Gender Specific Pay Statistics, which requires companies with

Even though we provide useful questions to ask future employers below, we do not want to be naïve about the reality of women in the legal field. No matter how comfortable one might be with interviewing (or what we would consider negotiation¹⁰¹), there are some important caveats. First, law students should be cognizant of who is conducting the interview. On campus interviews might be conducted by associates or partners and then subsequently, law students will likely interview with a combination of associates and partners in callback interviews. Because partners and associates have access to different levels of information about compensation or leadership decisions, law students need to take care to ask the right person the right question.

Second, law students need to carefully consider the timing of their questions in the context of a job interview. Some questions are best left for after an offer has been made, while others are more general and can be framed as gathering more information about firm culture during the interview process.

Third, the framing of these questions is crucial regardless of timing.¹⁰² Contextualizing a question as “I’m interested in how diversity values permeate firm culture, and so I was curious about...,” is much less likely to lead to a defensive response and could gather useful information. We present the questions below without a frame for the purpose of isolating the key information law students need, but students will likely need to add their own frame or introduction to the question. Additionally, we urge students to consider tone, context, and framing when asking for information that might surprise or challenge a future employer.

Finally, law students should be cognizant of the type of questions they ask. For optimal results, ask open-ended questions. The answers to closed-ended questions are likely discoverable on the firm’s website and students should prepare beforehand to collect this information to demonstrate interest in a particular firm. Instead, law students should ask questions about the interviewer’s unique experience at the firm (*e.g.*, “I am curious about the mentoring of junior associates. Can you tell me

thirty-five or more employees to report on gender pay gaps, led to a seven percent decrease in the pay gap).

101. We strongly believe that the best negotiation advice can and should be applied in job interviews as well. Any interaction with a law firm looking to hire is the beginning of the negotiation about that job.

102. We want to acknowledge that these questions are blunt. Our purpose is to be clear on what to ask. However, law students will want to frame these questions with the appropriate techniques.

how this has worked for you?”). This will make for better conversation and allow students to gain further insight into the firm’s culture.¹⁰³

If law students feel confident in their negotiation skills, but are hesitant to speak up in fear of potential backlash, we offer tools to circumvent this obstacle, such as additional framing techniques.¹⁰⁴ The language women use in negotiation matters.¹⁰⁵ “To help destabilize the dichotomy or required unidimensionality that seems to exist for each gender, women might add to their own complexity and multidimensionality by presenting simple and acceptable social accounts.”¹⁰⁶ Thus, it would be helpful to frame the question by saying “as a law student, I’m taught to ask questions” or “I am generally a curious person so, can you tell me more about....” Other framing could include bringing in other authorities: “Our career services has advised us to ask about...” or “My negotiation professor told us to be sure to gather information about....”¹⁰⁷

If law students are not confident in their negotiation skills, they are not alone.¹⁰⁸ Moreover, this socialization does not stem from gender

103. For more support, law students can consult with materials from client counseling classes and recall lessons from clinical experiences on how to ask good questions.

104. In some instances, because of gender expectations, this framing is even more important. See Andrea Schneider, *Negotiating While Female*, 70 SMU L. REV. 695, 704–06 (2017) [hereinafter Schneider, *Negotiating While Female*]. Women may refrain from negotiation based on the idea that “women will not be liked if they are ‘pushy’ (an adjective, like ‘bossy,’ that is almost exclusively used about women.” *Id.* at 704. Studies have shown that women who behave in a confident and strong manner may be viewed more negatively than men who behave similarly. *Id.* “When women negotiate, they may lose both social and economic capital by not being liked at work or in the forms of not being hired nor promoted.” *Id.* at 706.

105. For example: “Women should appeal to common goals. When parties share a common overarching goal, then requests made by one party are less likely to be seen as threatening.” See Catherine H. Tinsley, Sandra I. Cheldelin, Andrea Kupfer Schneider & Emily T. Amanatullah, *Women at the Bargaining Table: Pitfalls and Prospects*, 25 NEGOT. J. 233, 242 (2009). In terms of timing, we advised that “[w]omen . . . should try to time their battles and evaluate when requests are going to be perceived as less rather than more threatening. Under more favorable conditions, people will be more open to self-advocating women.” *Id.* Yet we should note that women attorneys do not face backlash for negotiating on behalf of clients where assertiveness is expected. Andrea Kupfer Schneider, Catherine H. Tinsley, Sandra Cheldelin & Emily T. Amanatullah, *Likeability v. Competence: Why Political Candidates Face It but Lawyers Do Not*, 17 DUKE J. GENDER L. & POL’Y 363, 380 (2010). Therefore, using frames that remind your counterpart of your position as a lawyer can be helpful (*i.e.*, “as a lawyer who wants to negotiate” or “on behalf of our current law students”).

106. Schneider, Tinsley, Cheldelin & Amanatullah, *supra* note 105, at 383.

107. One of our author’s favorite lines.

108. “[W]omen have been socialized . . . to get along, to make nice, and to be team players.” Schneider, *Negotiating While Female*, *supra* note 104, at 707. As

alone. Family dynamics, birth order, religion, racial, and ethnic identities all play a role in determining if we are comfortable speaking up for ourselves. If a student is the first person in their family or first woman they know to go to law school, it is helpful to remember the barriers already broken. We want to remind all that gender differences do not predetermine abilities in negotiation. Studies of law students show no difference in their ability to negotiate salary.¹⁰⁹ Furthermore, “professors measuring negotiation skills in law school classes also have not found a gender difference.”¹¹⁰ Thus, law students of all genders are equipped to self-advocate and ask difficult questions. They should not let fear hold them back. Negotiation is a critical part of the job, so developing these skills is necessary for success in the profession.¹¹¹ We encourage law students to take negotiation workshops and practice, practice, practice!

children, some “girls’ brains detect emotional cues at an earlier age than young boys, making it easier for adults to teach young girls to behave well” and causing some girls to learn they are most valuable to authority “when they are compliant and well-behaved.” *Id.* at 701. Because of this, “girls have actively avoided behaviors necessary for confidence building,” causing them to “suffer a greater drop in self-esteem than boys and take longer to get over demoralization.” *Id.* This pattern continues and, by adulthood, women “have deeply internalized what society has taught them to be their proper role,” leading them to set lower goals for themselves, and therefore, accept lower results in a negotiation. *Id.* at 702.

109. Schneider, *Negotiating While Female*, *supra* note 104, at 702–03.

110. *Id.* at 712.

111. For the last several decades, studies of lawyers highlighted the need for negotiation skills to be taught in law school. *See, e.g.*, ABA, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 7–10, 139 (1992) (widely known as the MacCrate Report); ROY T. STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (widely known as the Carnegie Report). And, starting in 2026, the NextGen bar will include negotiation.

Lawyers of all genders need and are expected to have negotiation skills and we see little data that differentiates men and women lawyers. Andrea Kupfer Schneider, *What’s Sex Got To Do With It: Questioning Research on Gender & Negotiation*, 19 NEV. L.J. 919, 948 (2019) [hereinafter Schneider, *What’s Sex Got To Do With It*] (“In more complex scenarios and studies, in fact, we can find data that shows that women do initiate negotiation at the same rate as men. Women will initiate negotiations when they are trained to do so. Women will negotiate when expected to negotiate—if this is part of their role on behalf of a client or company, when the job posting itself says that negotiation is expected, or when they have been told to negotiate. Women negotiate when they have information about the job.” (footnotes omitted)).

B. Leadership

Across the United States, women lawyers lag substantially behind their male counterparts when it comes to representation in law firm leadership positions,¹¹² such as partnership, membership in hiring and compensation committees, and roles as practice group leaders (PGLs).¹¹³ Research has shown that after seven years of practice, men are two to five times more likely to become partners than women—and this disparity exists even for women lawyers who *never* took time away to focus on family life.¹¹⁴ On a national level, although more women have been attending law school, graduating law school, and joining firms as associates, women lawyers make up only 19% of firm managing

112. This trend is unfortunately universal and not just specific to law firms. A study by McKinsey & Co. and LeanIn.Org that surveyed 333 organizations and more than 40,000 employees showed that women lose when it comes to promotions:

[A]t the all-important first promotion from entry level to manager, the ladder is broken. Only 87 women make it up that far — and only 82 women of color — for every 100 men who do. And that one critical phase is a one key factor: if you can't climb up, you can't climb up. . . . The study also found that it's not just women employees leaving companies — something we've been seeing since the Great Resignation. This is a troubling subset of talent loss that has left many an HR team shaking their heads, to be sure. But what the McKinsey / LeanIn study reveals is that women *leaders* are leaving their companies. Just because they have climbed higher doesn't mean they're comfortable up there. In fact they're uncomfortable: For every one woman at the director level who gets promoted up another level, there are two other women directors who choose to leave the company.

Meghan M. Biro, *Why Women Are Leaving the Workplace*, FORBES (Oct. 24, 2022, 7:25 PM), <https://www.forbes.com/sites/meghanbiro/2022/10/24/why-women-are-leaving-the-workplace/?sh=2d681f374ea1>.

113. Debra Cassens Weiss, *Female Lawyers Still Underrepresented, Especially in Partnership Ranks; Which Law Firms Do It the Best?*, A.B.A. J. (Sept. 16, 2021, 1:59 PM), <https://www.abajournal.com/news/article/female-lawyers-still-underrepresented-especially-in-partnership-ranks-which-law-firms-do-best> [https://perma.cc/5RDN-FUGA] (“About 23% of equity partners in U.S. law firms are women, even though women have made up at least 40% of U.S. law students for decades, according to a *Glass Ceiling Report* by Law360.”); Rhode, *Diversity and Gender Equity*, *supra* note 22, at 872; Gertner, *supra* note 22, at 1475 (“Women lawyers are not assuming leadership roles in proportion to their numbers.” (quoting Elena Kagan, *Leslie H. Arps Memorial Lecture: Women and the Legal Profession—A Status Report*, 61 REC. 37, 40 (2006))); Wald, *supra* note 14, at 2246 (“[W]omen lawyers have run into the glass ceiling effect, failing to achieve equal representation on the partnership ranks.”); Johnson, *supra* note 13; Marion C. Burke, *Lessons from Labor Feminists: Using Collective Action To Improve Conditions for Women Lawyers*, 26 AM. U. J. GENDER SOC. POL’Y & L. 559 (2017); Joan C. Williams & Veta Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS L.J. 597, 608 (2011) (“[T]he committees that decide law firm compensation often are startlingly lacking in diversity.”).

114. STERLING & CHANOW, *supra* note 32, at 3.

partners, 28% of office managing partners, and 25% of PGLs.¹¹⁵ These statistics are plainly, and totally, disproportional.

Our study found that, in Milwaukee, 28.2% of compensation committee members are women, 43.3% of hiring committees are women, and only thirteen of the thirty-two Milwaukee firms had a woman managing partner in the last decade.¹¹⁶

The discrepancy highlighted by this hiring committee data suggests that Milwaukee firms are placing women in spaces of high community visibility but are lagging in respect to other areas of law firm leadership.¹¹⁷ This visibility is without significant power. When women are the faces of hiring committees, or “firm ambassadors,” they represent the firm at law schools, award ceremonies, fundraisers, and other community events. However, being responsible for entry-level lawyers has limited power. For example, summer or entry-level hiring committees are often not responsible for lateral hires who could potentially wield much influence at the firm.¹¹⁸ When it comes to leadership positions with direct impact upon the firm, such as ones that can assign work and exercise authority, women are underrepresented.

Moreover, our regression analysis shows that representation of women on the compensation committee is directly linked to better pay for women. The number of women on the compensation committee is correlated (59%) with having women in the top twenty percent of a firm’s earners. And, even more strikingly, having just a single woman on the committee has a very strong (67%) correlation with having women in the top echelon of earners.¹¹⁹

One of the main reasons why women are leaving firms and the legal practice is the lack of leadership opportunities available to them.¹²⁰ One consequence of this attrition is that remaining women lawyers feel isolated, creating a vicious cycle. Without women lawyers in leadership

115. PEERY, 2020 REPORT, *supra* note 37, at 9.

116. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 5.

117. A survey conducted by the ABA and ALM Intelligence found that “[w]omen report being *four to eight times more likely* to be overlooked for advancement, denied salary increase or bonus, treated as a token representative for diversity, lacking access to business development opportunities, perceived as less committed to her career, and lacking access to sponsors.” ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, ABA & ALM INTEL., WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE 8 (2019), https://www.abajournal.com/files/walking_out_the_door_-_final_as_of_nov_14_2019_pm.pdf [<https://perma.cc/G3V8-P5EV>]. This is not new. *See generally* Elizabeth H. Gorman, *Work Uncertainty and the Promotion of Professional Women: The Case of Law Firm Partnership*, 85 SOC. FORCES 865 (2006).

118. Much thanks to Nora Platt for this insight.

119. Regression analysis on file with authors.

120. Deanne M. Koll, *Why Do Women Leave Law Firms?*, WIS. LAW., Mar. 2022, at 29–30.

positions, women attorneys may feel “that there is no one in a position of power [in the firm] ‘who can personally relate to her experience.’”¹²¹ This feeling is “even more acute for women of color who . . . feel[] isolated with regards to both race and gender.”¹²² Research suggests that one of the primary reasons for discrepancies between men’s and women’s participation in organizational leadership is a lack of developmental opportunities for women lawyers in mentorship, sponsorship, and networking.¹²³ The first questions set out below aim to help candidates understand the leadership structure and opportunities available to women at a given firm.

Leadership also comes through in how the work is assigned and how client teams are built. Are partners encouraged to work with different associates? Particularly, how does this work in law firms with multiple offices? Do partners look to who sits near them in the hallway or do they tend to think more holistically to put together the right team for a particular client or project? Can associates turn down assignments to work with partners that provide better mentorship and/or to leave time for more interesting future work? In short, is diversity considered when staffing deals and litigation teams, and how does the firm promote this?

Leadership Key Questions	
Pre-Job Offer:	
• What initiatives does the firm have regarding formal and informal mentorship and sponsorship for junior associates? Are associates encouraged to “shadow” more senior lawyers? Can you share recent success stories about sponsorship relationships? • How are deal and litigation teams staffed (within the office and within the whole firm)? • How have you been impacted by the firm’s diversity efforts?	
Post-Job Offer:	
• How are practice group leaders and committee members selected? • How many women are members of your firm’s management committee?	

121. STERLING & CHANOW, *supra* note 32, at 16.

122. *Id.* at 17.

123. *Id.* at 15–16. Deborah L. Rhode, *Leadership in Law*, 69 STAN. L. REV. 1603, 1653 (2017) (“In one ABA study, two-thirds of women of color and over half of white women and men of color would have liked better mentoring.”). *See also* Fiona M. Kay & Jean E. Wallace, *Mentors as Social Capital: Gender, Mentors, and Career Rewards in Law Practice*, 79 SOCIO. INQUIRY 418, 444–45 (2009) (finding that while women are just as likely to seek out and secure mentors as men, the relationship does not accrue the same benefits).

- In 2017, the Diversity Lab launched the Mansfield Rule,¹²⁴ encouraging law firms to consider at least thirty percent of diverse lawyers for leadership roles. Does your firm have a policy about or consider the demographic makeup of classes under consideration for partnership?
- How does the firm respond to client requests for diverse teams?

C. Pay Equity

Underrepresentation is clearly linked to undervaluing women in law firms. Women are vastly underrepresented as equity partners.¹²⁵ “[W]omen are more likely to be found as non-equity partners rather than

124. The Mansfield Rule was created to address the lack of representation by requiring firms to “consider at least 30 percent diverse lawyers for all governance and leadership roles,” such as equity partner promotions, lateral partner and mid-level hiring, office and practice group heads, and appointments to the board of directors and compensation committee. STERLING & CHANOW, *supra* note 32, at 33; DELIA VIOLANTE & ROSE ORS, WOMEN IN BUS. L. INITIATIVE, GENDER PARITY IN U.S. LAW FIRMS: RECOMMENDATIONS 4 (2019), https://www.law.berkeley.edu/wp-content/uploads/2019/10/GenderParity_Recommendations-for-Law-Firms.pdf [<https://perma.cc/H66V-YCG8>]. In 2017, Diversity Lab launched the inaugural Mansfield 1.0 certification process. *Mansfield Rule “Early Adopters” Show Significant Diversity Growth—and Outpace Legal Industry—in Critical Leadership Roles*, DIVERSITY LAB (Apr. 15, 2021) [hereinafter *Mansfield Rule “Early Adopters”*], <https://web.archive.org/web/20210415132303/https://www.diversitylab.com/pilot-projects/mansfield-rule-early-adopter-firm-results/>. “Diversity Lab leverages data, behavioral science, design thinking, and technology to further develop and test new ideas and research, measure the results, and share the lessons learned.” CAREN ULRICH STACY, DIVERSITY LAB, INCLUSION BLUEPRINT FINDINGS REVEAL TOP INCLUSION ACTIONS & PRACTICES THAT CONTRIBUTE TO GREATER LAW FIRM DIVERSITY 4 (2021), <https://diversitylab.com/wp-content/uploads/2024/01/2021-Inclusion-Blueprint-Champions-Findings-Press-Release-15Dec2021.pdf> [<https://perma.cc/2FUR-SAVM>]. Mansfield certification requires firms to measure and confirm that the firm considers “candidate pools that are at least 30% diverse — including women and underrepresented racial and ethnic lawyers as a starting point — when hiring senior associates and partners, promoting into the equity partnership and selecting leaders for management roles.” *Mansfield Rule “Early Adopters,” supra*.

An analysis of “early adopter” firms showed that women lawyers were progressing into leadership as part of “Management Committees, Partner Review Committees, and the partnership as a whole — at a statistically higher percentage than they were pre-Mansfield.” *Id.* In Mansfield 2.0 and 3.0, the Diversity Lab expanded its focus on inclusive representation to LGBTQ+ lawyers and lawyers with disabilities. *Id.*

But see Paola Cecchi-Dimeglio, *Why the 30 Percent Mansfield Rule Can’t Work: A Supply-Demand Empirical Analysis of Leadership in the Legal Profession*, 91 FORDHAM L. REV. 1161, 1186 (2023) (arguing that “[t]he Mansfield Rule is not mathematically achievable” because of an insufficient number of junior women attorneys in the pipeline to supply leadership roles).

125. Williams & Richardson, *supra* note 113, at 605 (“The underrepresentation of women among law firm equity partners has a profound influence on compensation decisionmaking.”).

equity partners compared to their male colleagues.”¹²⁶ Moreover, the pay gap between equity and non-equity partners is also widening.¹²⁷ Across all types and levels of lawyers, men are paid more per year than women.¹²⁸ This includes the partner level, where compensation for men is increasing at a faster rate than women.¹²⁹ In 2010, a woman partner “earned an average of 24% less than their male counterpart[]” and by 2018, that woman partner made 35% less than their male counterpart.¹³⁰ In 2019, “[t]he mean [woman] associate salary was 94% of that of the mean male associate’s pay.”¹³¹ Women partners “receive[d] between 44% and 53% less in annual compensation than male law firm partners.”¹³² Thus, “[i]n one year, women law firm partners earn[ed] on average \$346,000 less than male law firm partners. So, if the gap holds for ten years, on average, women law firm partners would have earned \$3.46 million less than their male peers.”¹³³ On a national level, “high-achieving female equity partners earn 51% less than similarly situated

126. STERLING & CHANOW, *supra* note 32, at 27.

127. Debra Cassens Weiss, *Pay Gap Has Widened for Male and Female Partners in Larger Law Firms, New Report Says*, A.B.A. J. (Sept. 15, 2020, 11:30 AM) [hereinafter Weiss, *Pay Gap Has Widened*], <https://www.abajournal.com/news/article/pay-gap-has-widened-for-male-and-female-partners-in-larger-law-firms-report-says> (“In 2010 equity partners earned, on average, 59% more than nonequity partners. In 2018, equity partners earned 67% [more].”). This is not a new concern, *see* John Hagan, *The Gender Stratification of Income Inequality Among Lawyers*, 68 SOC. FORCES 835 (1990), but rather appears to be getting worse.

128. *See* Weiss, *Pay Gap Has Widened*, *supra* note 127; Burke, *supra* note 113, at 560; PEERY, 2020 REPORT, *supra* note 37, at 34.

129. Weiss, *Pay Gap Has Widened*, *supra* note 127.

130. *Id.*

131. Lee, *supra* note 20, at 587–88.

132. *Id.* at 588.

133. *Id.* The story is similar for equity partners. “[T]he mean pay for male [equity] partners was \$109,491 more than the mean pay for [women] equity partners (\$809,279 versus \$699,728, respectively)” which results in women partners earning “86% of a male equity partner’s pay.” *Id.* at 588–89. Major, Lindsey & Africa conduct annual surveys of partner compensation. The 2022 Report noted, when looking at women’s pay relative to their male counterparts:

As in our prior Surveys, when data are sorted by gender, male partners’ average compensation continues to significantly outpace that of female partners (\$1,212,000 vs. \$905,000), though female partners’ compensation once again rose at a much higher rate than that of male partners (+26% vs. +17%). While the average male partner’s total compensation is still 34% more than the average female partner’s, the wage gap has narrowed significantly from the 53% differential reported in our 2018 Survey and the 44% differential reported in 2016 and 2020.

JEFFREY A. LOWE, MAJOR, LINDSEY & AFR., LLC, LAW360, 2022 PARTNER COMPENSATION SURVEY 22 (2022) [hereinafter 2022 PARTNER COMPENSATION SURVEY], https://assets.law360news.com/1540000/1540208/2022_partner_compensation_survey.pdf [https://perma.cc/9PXC-VJA5].

male equity partners and 17% less than lower-achieving male equity partners.”¹³⁴ Relatedly, the 2021 *In Their Own Words* ABA Study reported that “pay disparity was the female participants’ most frequently mentioned reason for leaving their firm.”¹³⁵ This disparity, coupled with disparities in credit allocation, not only impacted their access to leadership opportunities, but also the quality of the associates that work on their matters. Put plainly, “[i]f the money doesn’t say the firm values you, they—the associates—will treat you that way.”¹³⁶

Our study found that, in Milwaukee, 21.8% of equity partners were women.¹³⁷ Although neither the 2021 nor the 2022 LFEI looks at specific salary data at all levels of compensation, our most recent study found that of the top twenty percent of earning partners in each firm, only 17.6% of them are women, which means that only 6.8% of women lawyers included in the survey in Milwaukee are among the top fifth earners in their firms.¹³⁸

This next set of questions directly addresses the issue of pay equity and equips law students to understand sooner, rather than later, the measures that are used by their firm. Pay inequity has a long history in the United States,¹³⁹ not only in the legal field, but in the workplace more generally. Pay inequity, colloquially known as the “gender pay gap,” is usually “referred to as the average difference in earnings between men and women.”¹⁴⁰

134. Markovic & Plickert, *supra* note 46, at 583 (cleaned up). It is important to note:

Thirty-one percent (31%) of male partners reported they were Very Satisfied with their compensation, compared to 26% of female partners, up 6% and 2%, respectively. At the opposite end, a higher percentage of female partners placed themselves in one of the Dissatisfied categories (22%), a 2% decrease from 2020. The male percentage rose 1% to 18%.

2022 PARTNER COMPENSATION SURVEY, *supra* note 133, at 15. See also J. Andrew Morgan, *How To Close the Gender Pay Gap: Transparency in Data Regarding Compensation is the Key*, 35 CONN. J. INT’L L. 409, 410–11 (2020) (“Korea, Estonia, Japan, Latvia, Chile, Canada, and the United Kingdom also have significant national gender pay gaps. . . . [I]n 2018, the gender pay gap in the United Kingdom was as large as 17.9%. . . . [I]t is reported that women, globally, are paid about 63 cents for every dollar paid to men.”).

135. STERLING & CHANOW, *supra* note 32, at 8.

136. *Id.*

137. BOGLI, CHIN & SCHNEIDER, LFEI 2022, *supra* note 52, at 6.

138. *Id.* at 7.

139. One of the earliest examples of the gender pay gap was from World War II: “In 1940, about 28% of women in the United States participated in the labor force. . . . [However, even] though women started earning more money, the wage effects related to increases in the female labor supply were uniformly more negative for women than men.” Morgan, *supra* note 134, at 409 (footnotes omitted).

140. *Id.*

Our key questions highlight how a firm approaches compensation and pay equity. These conversations can be difficult to broach, particularly for women.¹⁴¹ Workplace culture may contribute to this challenge, including “pay secrecy policies.”¹⁴² A survey by the Institute for Women’s Policy Research (IWPR) that asked workers about their ability to discuss wages and salaries showed that nearly two-thirds of private sector workers were either “discouraged or prohibited from discussing wage and salary information.”¹⁴³ And despite state-level efforts to penalize employers who retain such policies, recent data suggests that pay secrecy has not really changed.¹⁴⁴

And attitudes are shifting. Millennials are more likely to “discuss pay with colleagues, more likely to know what their colleagues earn and more likely to reject the salary taboo explicitly.”¹⁴⁵ This is an important step in encouraging women to gather the information they need in order to negotiate.¹⁴⁶ Whether it is discussions at the firm level or individually, women need these transparent conversations to verify whether their current pay is a true and reflective representation of their performance, or whether bias and discrimination might be hindering fair pay.

Pay Equity Key Questions
Pre-Job Offer: • Can you please describe your firm’s billable hours requirement and processes? For example: Who signs off on associates’ timesheets? Does that person have review criteria? Are there specific pay increases or bonuses tied to billable hours? • Who is responsible for making compensation decisions (assuming the person you are meeting might know this and also considering the type of firm—because compensation at Big Law firms will most likely be determined by the market for associates)?

141. See Eve Tahmincioglu, *One Reason for Pay Gap: Women Don’t Speak Up*, NBC NEWS (May 6, 2007, 1:28 PM), <https://www.nbcnews.com/id/wbna18418454>; Jeff Zhong, *Gut Check: Why Are Women Uncomfortable Talking About Salary?*, PAYSCALE (Jan. 12, 2017), <https://www.payscale.com/salary-negotiation-guide/why-women-are-uncomfortable-talking-about-salary/> [<https://perma.cc/JJ4J-DTLA>].

142. Jake Rosenfeld, *There’s Still a Taboo on Discussing Salaries. But Millennials Are Breaking It*, WASH. POST (Sept. 6, 2020, 6:00 AM), <https://www.washingtonpost.com/outlook/2020/09/06/millennial-salary-taboo/>.

143. Press Release, Inst. for Women’s Pol’y Rsch., Pay Secrecy and Paycheck Fairness: New Data Shows Pay Transparency Needed (Nov. 15, 2010), <https://iwpr.org/pay-secrecy-and-paycheck-fairness-new-data-shows-pay-transparency-needed/> [<https://perma.cc/U429-Z83X>].

144. Rosenfeld, *supra* note 142.

145. *Id.*

146. See, e.g., Schneider, *What’s Sex Got To Do With It*, *supra* note 111, at 944; Schneider, *Negotiating While Female*, *supra* note 104, at 717–18.

- Are discretionary bonuses part of the compensation package? Can you explain how that works and how they are allocated?
- Who conducts and provides input for performance evaluations?

Post-Job Offer:

- What is your origination¹⁴⁷ policy?
- What are the demographics of the compensation committee?
- Does your firm analyze compensation for potential biases and disparities?
- Does your firm know whether it has compensation gaps based on gender (or race)?
- What has the firm done to address bias in your compensation structure?

147. One likely root of pay disparity is origination credit and the way in which it is awarded. STERLING & CHANOW, *supra* note 32, at 8. Origination credit is a method of determining credit to attorneys based on the dollar value of revenue from clients or matters an individual attorney has brought to a firm and is then awarded to that partner in the compensation process. Williams & Richardson, *supra* note 113, at 604 n.38. Origination credits “have emerged over time as the key driver of partner compensation.” JEFFREY A. LOWE, MAJOR, LINDSEY & AFR., LLC, *Major, Lindsey & Africa’s Partner Compensation Surveys: A Decade of Perspective* 8 (2020), https://f.hubspotusercontent20.net/hubfs/209075/MLA_PCS_ADcadeOfPerspective_090920.pdf [<https://perma.cc/K2EU-ZF2S>].

In our study of law firms in Milwaukee, we also found a slight negative correlation (-15%) between a subjective determination of partner compensation and the number of women in the top echelon of earners. (Regression analysis on file with authors.)

An ABA study found that forty-six percent of women lawyers were either dissatisfied or extremely dissatisfied with the recognition they received for their work as opposed to just fifteen percent of men. LIEBENBERG & SCHARF, *supra* note 117, at 5. Men are also of the thought that “an imperfect compensation process . . . generally worked out in the long run.” STERLING & CHANOW, *supra* note 32, at 10. The women respondents “resent the way credit is distributed in law firms and want the distribution to be more equitable.” *Id.* Respondents also cited that the origination credit systems fail to account for being a part of the pitch team that brought in a client and for maintaining existing relationships. *Id.* at 11. The study found that women were not receiving credit for expanding and maintaining existing client relationships. *Id.*

The reason women lawyers find origination credits harder for them to achieve is twofold. First, women lawyers have less access to networking and mentoring. Tracey J. Coates, Eva N. Juncker & Geoffrey Witherspoon, *Law Firm Origination Policies: Climbing the Mountain to Equity*, LAW PRAC. TODAY (June 15, 2020), <https://www.lawpracticetoday.org/article/law-firm-origination-policies-climbing-mountain-equity/> [<https://perma.cc/SXB2-CL7F>]. Second, women lawyers receive less help from their networks than men. *Id.* Additionally, origination credit furthers two patterns of gender bias in women. First, it creates the belief in women that “they have to ‘try twice as hard to get half as far’ due to an unspoken sense than men are entitled to share credit, but women are not.” *Id.* (quoting Williams & Richardson, *supra* note 113, at 637). And second, women lawyers are often found “in a ‘double bind,’ where they are punished or faulted for lacking collegiality or exhibiting behavior that, when exhibited by men, are seen as showing that he is competent and confident.” *Id.* (quoting Williams & Richardson, *supra* note 113, at 637).

- Are there practice groups in your firm that typically use flat-fee arrangements rather than hourly billing? Are associate billable hours requirements adjusted when associates work primarily on flat-fee matters?

D. Attrition

Women are still leaving the legal profession at high rates.¹⁴⁸ According to Law360's study, 42% of attorneys who leave firms are women, 29% of partners who leave are women, and 13% of attorneys who leave are women of color.¹⁴⁹ So, even though women make up only 37.7% of attorneys nationally, they represent 42% of attorneys who leave firms.¹⁵⁰ According to the *Women Leaving Law* report by Leopard Solutions:

The reasons cited in the survey by respondents on why they left their Big Law positions included what you would expect – gender biases, microaggressions, billable hour target pressure, preservation of mental health, lack of mentorship, unequal pay, as well as isolation, long hours and unpredictable schedules, lackluster career trajectory prospects and insufficient work-life balance, among others. . . . As one woman told us, “Female attorneys have to work harder to achieve the same goals and show twice the commitment of their male counterparts. Work-life balance is more difficult to attain for female attorneys because they often have more obligations both inside and outside of work without the same amount of support.”¹⁵¹

The findings of our survey seem to debunk the common, yet false, belief that women leave the field solely out of obligation to their families and others.¹⁵² But this narrative, that “women’s decisions to devote more

148. Hersch & Meyers, *supra* note 41, at 916.

149. Bell, *supra* note 33.

150. *Id.*

151. Leopard, *supra* note 40.

152. Laura Leopard also notes that women are not leaving due to childcare barriers stemming specifically from the COVID-19 pandemic:

Perhaps the most eye-opening insight from the survey – while three-quarters of survey respondents said they are mothers, *women lawyers are not leaving the legal field due to childcare barriers resulting from the COVID-19 pandemic*. Nearly 70% of respondents reported that staying home with their children had little or nothing to do with their decision to leave their legal jobs.

time to caregiving and homemaking influence their career choice, in that they are less likely to take positions that require excessive hours, inflexible schedules, or frequent travel, and influence their performance on the job,” is a “blame game.”¹⁵³ It blames women for the “achievement gap between men and women in the workplace,”¹⁵⁴ and “instead of looking at possible discriminatory reasons for the achievement gap . . . , society, the media, employers, and courts blame women themselves.”¹⁵⁵ As Nobel Prize-winning economist Claudia Goldin has noted: “Women

Id. See also Nancy Reichman & Joyce Sterling, *Parenthood Status and Compensation in Law Practice*, 20 IND. J. GLOB. LEGAL STUD. 1203, 1221 (2013) (finding that parenthood had no significant effect on orientation to work or practice setting and that gender mattered more in compensation decisions than parenthood).

But see Robin J. Ely & Irene Padavic, *What’s Really Holding Women Back? It’s Not What Most People Think*, HARV. BUS. REV., Mar.–Apr. 2020, at 58, 62 (noting they “found incongruities within the work/family rhetoric itself” as “[w]omen were held back because, unlike men, they were encouraged to take accommodations, such as going part-time and shifting to internally facing roles, which derailed their careers,” suggesting that “[t]he real culprit was a general culture of overwork that hurt both men and women and locked gender inequality in place”). Alissa Rubin Gomez also notes the data stacks against women on this front:

In the ABA’s most recent study, 54% of the women lawyers surveyed said that arranging childcare is their full responsibility. Only 1% of men said the same. Only 4% of men reported bearing the sole responsibility to leave work due to childcare or to handle children’s extracurricular activities, whereas 32% and 20% of women reported the same responsibilities, respectively. These numbers are staggering. If a woman is 54 times as likely to have to arrange childcare alone, and 8 times as likely to have leave work to handle childcare, then she faces nearly impossible odds at having enough time available to perform legal work (much less bill for it) at the same rate as her male peers, which makes advancement pretty challenging.

Alissa Rubin Gomez, *The Mismeasure of Success*, 94 ST. JOHN’S L. REV. 927, 930–931 (2020) (footnotes omitted). Paula Schaefer similarly acknowledges:

The [attorneys] most likely to remain in big law [after having children] are those whose spouses are willing to forego a career to become a primary caregiver for the family, including the lawyer. Statistically speaking, male attorneys are much more likely than female attorneys to have spouses willing to do so. It then follows that many more male than female parents remain in partnership or partnership-track positions.

Paula Schaefer, *On Balance: Leading by Leaving*, 83 TENN. L. REV. 931, 939 (2016).

153. Nicole Buonocore Porter, *The Blame Game: How the Rhetoric of Choice Blames the Achievement Gap on Women*, 8 FIU L. REV. 447, 449 (2013) (footnote omitted). But see Ghazala Azmat & Rose Ferrer, *Gender Gaps in Performance: Evidence from Young Lawyers*, 125 J. POL. ECON. 1306, 1306 (2017) (finding that women lawyers bill ten percent fewer hours).

154. Porter, *supra* note 153, at 449.

155. *Id.*

don't step back from work because they have rich husbands They have rich husbands because they step back from work.”¹⁵⁶

156. Claire Cain Miller, *Women Did Everything Right. Then Work Got 'Greedy.'*, N.Y. TIMES (Apr. 26, 2019), <https://www.nytimes.com/2019/04/26/upshot/women-long-hours-greedy-professions.html> (covering a thesis from Claudia Goldin's book *Career and Family*).

The story of why women leave law firms is more nuanced. Some women (and men) opt out of law firms because of poor work-life balance. But other women feel pushed out for their family choices and would have stayed had that option been given. Most notably for our study, a significant number of women report that sex discrimination¹⁵⁷—in pay, leadership opportunities, or harassment¹⁵⁸—plays a large part in their exit.¹⁵⁹ In assessing parity, it is imperative that we stop looking only at the numbers of law school graduates, but also integrate retention rates into the assessment.¹⁶⁰

157. A more subtle form of sex discrimination has taken place since the rise of the #MeToo Movement. Male superiors are hesitant to form close relationships with women subordinates. As a result, women lack mentorship opportunities.

“I now think twice about spending one-on-one time with a young female colleague,” said one American finance executive, speaking on the condition of anonymity because the issue is “just too sensitive.” . . . It’s a problem many have acknowledged. Last February, two online surveys by Lean In and SurveyMonkey on the effects of #MeToo in the workplace found that almost half of male managers were uncomfortable engaging in one or more common work activities with women, such as working one on one or socializing. One in six male managers was uncomfortable mentoring a female colleague, according to the studies, which together surveyed nearly 9,000 adults employed in the United States.

Katrin Bennhold, *Another Side of #MeToo: Male Managers Fearful of Mentoring Women*, N.Y. TIMES (Jan. 27, 2019), <https://www.nytimes.com/2019/01/27/world/europe/metoo-backlash-gender-equality-davos-men.html>.

158. Kim Elssesser, *Female Lawyers Face Widespread Gender Bias, According to New Study*, FORBES, <https://www.forbes.com/sites/kimelsesser/2018/10/01/female-lawyers-face-widespread-gender-bias-according-to-new-study/> (Oct. 5, 2018, 1:03 PM) (“According to a recent survey of 2,827 lawyers, female lawyers, and especially women of color, are more likely than their male counterparts to be interrupted, to be mistaken for non-lawyers, to do more office housework, and to have less access to prime job assignments.”). The research cited in the article was conducted by the ABA’s Commission on Women in the Profession as well as their Minority Corporate Counsel Association. *Id.*

159. Sadly, many women leave for reasons attributable to discrimination: 90 percent of survey respondents said that workplace culture was the main reason why they quit, with 82 percent blaming lack of flexibility and work/life balance. 74 percent said that the trajectory of their careers drove them to leave their current firms, a signal that many women feel shut out of advancement opportunities. This is although more than 60 percent of the women we surveyed said they had wanted to become partner early in their careers.

Leopard, *supra* note 40.

160. Debra Cassens Weiss, *Why Are Experienced Women Lawyers Leaving BigLaw? Survey Looks for Answers and Finds Big Disparities*, A.B.A. J. (Nov. 14, 2019, 8:00 AM), <https://www.abajournal.com/news/article/why-are-women-lawyers-leaving-biglaw-survey-looks-for-an-answer-and-finds-big-disparities> [https://perma.cc/3AGQ-W6R7] (“[M]ost striking . . . was the difference in rates of sexual harassment. Fifty

Moreover, there are plenty of women who leave firms but not because of children. Attrition of women in the legal field occurs regardless of whether they have family responsibilities at home. In fact, women in the field, in anticipation of stagnation, plan their professional exit years before they actually leave.¹⁶¹ They stunt their careers by “not pursu[ing] the most difficult specialties or challenging jobs,” because they anticipate leaving.¹⁶² By asking key questions, candidates will better understand whether the firm has an issue with attrition, which, at its core, reveals whether women believe that staying at the firm is worth it.

This next set of questions looks at attrition and company culture. How aware is the law firm of why people leave? How does it protect junior attorneys from bad behavior? As we know, faced with limited potential for growth as a leader and unequal pay, women leave.¹⁶³ These questions are designed to show how reflective the firm is in terms of its own culture, how aware it is of why people leave (or stay), and if it offers benefits that support family and work coexistence.

Attrition Key Questions	
Pre-Job Offer:	
• Do you conduct stay interviews with employees or have other 360-degree review mechanisms? Do you conduct firm culture surveys? How are the results acted upon? • Are there particular benefits that encourage both work and family planning?¹⁶⁴	
Post-Job Offer:	

percent of women, and only 6% of men, said they had received unwanted sexual conduct at work. Sixteen percent of the women and only 1% of men said they had lost work opportunities because they rebuffed sexual advances.”).

161. Gertner, *supra* note 22, at 1478.

162. *Id.*

163. As we have mentioned throughout the Article, many habits of the legal field need to change if we are to achieve parity:

When professional women leave the workforce in large numbers, the aggregate effect of their decisions have an impact on the careers of other women. The current gender gaps in career attachment are so large that even well-designed antidiscrimination laws may not be able to overcome statistical discrimination. Given the employment trends, employers could anticipate that an entry-level female associate will under-invest in her career compared to a male peer.

Jane R. Bambauer & Tauhidur Rahman, *The Quiet Resignation: Why Do So Many Female Lawyers Abandon Their Careers?*, 10 UC IRVINE L. REV. 799, 841 (2020). *See also* Claudia Goldin, *A Grand Gender Convergence: Its Last Chapter*, 104 AM. ECON. REV. 1091, 1116–17 (2014).

164. While some may find benefits such as egg freezing covered as part of healthcare and subsidized childcare attractive, others may see it as a firm’s cynical attempt to keep employees at their desk.

- Do you offer paternity leave? How many men have taken the full paternity leave over the past three years?
- How would the firm handle a situation in which someone made a sexist, racist, homophobic, or otherwise prejudiced remark? Similarly, how would the firm handle a situation in which a senior attorney acted upon a sexist, racist, homophobic, or otherwise prejudiced belief?
- What is the attrition rate of women lawyers in your firm after five (or fifteen) years?
- What strategies or initiatives does your firm have to address the attrition of senior attorneys? Does your firm have any formal attorney retention initiatives?

E. Transparency of DEI Efforts and Compliance

Our last set of questions is designed to give law students an understanding into what law firms have done to advance diversity, equity, and inclusion (DEI) overall. While gender imbalance is the focus of this Article, a law firm's broader commitment to DEI is likely to boost change and innovation throughout the firm. Given the focus on DEI in all spheres of society in the last three years, if a particular law firm has *not* changed anything, that inaction says something and is otherwise useful information for law students.¹⁶⁵ In addition, law students can hold law firms accountable by ensuring that their diversity efforts are more than performative window dressing.¹⁶⁶ For associates, the importance of DEI can also be measured in the allowance of billable hours. Much like there needed to be a push for pro bono hours to be counted as billable

165. Alcott, *supra* note 23, at 5 (“[I]t is imperative that law firms take a look at their policies and practices and self-evaluate the status of gender equity within their firm.”); *see also* Lee, *supra* note 20, at 620–21; Williams & Richardson, *supra* note 113, at 661–62.

166. In fact, a study looking at law firm hiring from 2007–15 found just that: When law firms hired (usually a lateral) woman into senior leadership, the firm was then *less* likely to engage in other diversity measures. Instead, the single token hire created an “illusion of progress” despite lacking the critical mass of women in leadership. Priyanka Dwivedi & Lionel Paoella, *How Gender Diversity at the Top of Law Firms Can Mask Poor Diversity Practices Overall*, COLUM. L. SCH.: CLS BLUE SKY BLOG (Jan. 19, 2024), <https://clsbluesky.law.columbia.edu/2024/01/19/how-gender-diversity-at-the-top-of-law-firms-can-mask-poor-diversity-practices-overall/> [https://perma.cc/QJ66-364V]; *see also* Priyanka Dwivedi & Lionel Paoella, *Tick-Off the Gender Diversity Box: Examining the Cross-Level Effects of Women’s Representation in Senior Management*, 67 ACAD. MGMT. J. 991, 998 (2024) (suggesting that more women on hiring and diversity committees is crucial to mitigating the negative impact that accompanies attentional lapses to diversity efforts).

hours, some firms have now permitted associates and partners to bill up to fifty hours of DEI work.¹⁶⁷

Transparency of DEI Efforts and Compliance Key Questions
Pre-Job Offer: • What programs, initiatives, or strategies does your firm implement to improve and maintain diversity within the organization? What have you been a part of? • How does your firm track and measure diversity, equity, and inclusion (DEI) initiatives? Are all employees required to complete DEI and cultural competence training?
Post-Job Offer: • Does your firm allow associates to receive bonus-creditable hours for any DEI initiatives? • Who is responsible for ensuring that your firm's DEI goals and objectives are met? • Do you publish your DEI data internally? • Does your firm have any specific, internal DEI groups? If so, are associates encouraged to join such groups?

III. NEXT STEPS FOR LAW STUDENTS, CAREER SERVICE OFFICES, LAW FIRMS, AND BAR ASSOCIATIONS

A. Run Your Own Law Firm Equity Study

Overall, the legal field needs to be transparent regarding the factors that cause women lawyers to leave their firms: leadership, pay, and

167. Hogan Lovells implemented a new policy that approved up to fifty hours of Diversity and Inclusion activities as billable and to count toward bonus thresholds. Kathryn Rubino, *Care About Biglaw Diversity? Well, Now You Can Bill for It*, ABOVE L. (Jan. 21, 2021, 12:48 PM), <https://abovethelaw.com/2021/01/care-about-biglaw-diversity-well-now-you-can-bill-for-it/> [<https://perma.cc/JS8J-7TYB>]. Dorsey & Whitney approved a similar policy, while Reed Smith approved DEI work as billable for *all timekeepers* (not just lawyers) and will also count toward bonus thresholds. Staci Zaretsky, *The First Biglaw Firm To Offer Billable Diversity Hours for All Timekeepers*, ABOVE L. (Jan. 29, 2021, 1:41 PM), <https://abovethelaw.com/2021/01/the-first-biglaw-firm-to-offer-billable-diversity-hours-for-all-timekeepers/> [<https://perma.cc/RX66-Q5LZ>]. However, Baker McKenzie's 125 billable diversity and inclusion hours policy "dwarfs" the other offerings by seventy-five hours. Staci Zaretsky, *Top 5 Biglaw Firm Raises the Bar on Billable Diversity & Inclusion Hours*, ABOVE L. (Feb. 11, 2021, 11:19 AM), <https://abovethelaw.com/2021/02/top-5-biglaw-firm-raises-the-bar-on-billable-diversity-inclusion-hours/> [<https://perma.cc/4WXT-J6PK>].

support.¹⁶⁸ In order to do that, we propose that more cities launch the LFEI study in their communities.¹⁶⁹ With greater resources and support, the LFEI easily can be expanded to include other cities, or can be converted to a statewide report, and ultimately duplicated in locations across the United States. We include both our questions (Appendix A) and guidelines on how to create and administer this kind of report in the appendices (Appendix B).

Whether more cities individually conduct similar reports, or more statewide associations do so, we propose that LFEI-like reports be done in more areas of the country so that law students and the legal community can better understand the particulars of their market. Press coverage of the Milwaukee report included local news and bar magazines¹⁷⁰—and no doubt led to even higher participation rates in the following year, when we announced we would publish the names of the firms participating (and therefore were able to reveal which firms were not participating). This type of public pressure has worked in changing corporate board compositions¹⁷¹ and, we believe, could also work in individual legal

168. Orly Lobel makes this argument for fixing all types of bias and explains how AI can be helpful in mining data, illustrating patterns, and continually looking for avenues of reform in her book, *The Equality Machine*. ORLY LOBEL, *THE EQUALITY MACHINE: HARNESSING DIGITAL TECHNOLOGY FOR A BRIGHTER, MORE INCLUSIVE FUTURE* 20–25 (2022). See also Orly Lobel, *Knowledge Pays: Reversing Information Flows and the Future of Pay Equity*, 120 COLUM. L. REV. 547, 571–72 (2020).

169. Who ultimately is the spearhead of the study can be debated; regardless, the pressure for the need for the study should be felt by multiple groups in the legal community—law students, practicing attorneys, and the outside community. As much as law firms should take ownership over the need to be transparent with their data, there needs to be a greater organization that is keeping them accountable. State bar associations have the ability to be that accountable organization and have a unique opportunity to be a leading resource for women attorneys in their state. If a state bar association adopts the LFEI, or a reporting survey similar, the number of women lawyers in leadership in the state's legal community would be accessible to stakeholders across the state and throughout the country, assisting law firms in creating focused, purposeful, innovative, and strategic reform to help women and minorities achieve true leadership. Although the LFEI is a complex and time-consuming project, the IWL has created a successful system of collecting, analyzing, and publishing information. The framework has already been prepared and executed, simplifying the acquisition for another entity, like state bar associations. Accordingly, from the perspectives of data collection, reflection, and application, the LFEI would impact a bigger audience, if adopted by a state bar.

170. See, e.g., Ed Finkel, *Glacial Change: Women in Law Firm and Corporate Leadership*, WIS. LAW., Sept. 2021, at 20.

171. Over the past twenty years, recurring reports that announced the composition of boards for Wisconsin public companies doubled the number of companies with at least one women director from twenty-two to forty-nine. MILWAUKEE WOMEN INC., 2022 RESEARCH REPORT 3 (2022), https://web.archive.org/web/20221011175721/https://www.milwaukeewomeninc.org/wp-content/uploads/2022/10/MWi_Report_2022_UPDATED.pdf. Moreover, highlighting the importance of having at least three women directors increased that number from six percent of Wisconsin companies in 2003 to forty-four percent in 2022. *Id.*

markets as well.¹⁷² Interest in this information exists, the external and internal data are already quantified, aggregate reporting can protect law firms' privacy, if desired, and, alternately, firms may opt to list their data publicly. Making this information accessible through a reliable resource (such as a state bar association) can improve issue awareness and equip law students with accurate information regarding the legal community they are about to enter. In short, transparency in salaries—and salary differentials—can only help make law firms more equitable.¹⁷³

B. Use Questions To Highlight Data—and Encourage Change

Law students can ask individual firms the key questions above, regardless of whether an LFEI study has been conducted in their community. Approaching the issue with targeted pressure on individual firms and firms in the aggregate will further emphasize the issue's importance to law firms. Law students need to remember: It's not you—

172. Partly fueled by the data collection of the LFEI in Milwaukee, attorneys and companies worked together to launch a “Diversity Hackathon” in the fall of 2023. Jeff M. Brown, *Milwaukee Attorneys Tackle Diversity Gap with ‘Hackathon,’* INSIDE TRACK (Sept. 20, 2023), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=15&Issue=17&ArticleID=30001> [<https://perma.cc/NEQ3-X2N7>]; Nora Platt, *Milwaukee Attorneys Pitch Ideas for Closing Diversity Gap at Hackathon Contest,* INSIDE TRACK (Nov. 15, 2023), <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=15&Issue=21&ArticleID=30110> [<https://perma.cc/DHC3-7GKW>].

173. See Marianne DelPo Kulow, *Beyond the Paycheck Fairness Act: Mandatory Wage Disclosure Laws—a Necessary Tool for Closing the Residual Gender Wage Gap*, 50 HARV. J. ON LEGIS. 385, 392–406, 427–29 (2013) (advocating for mandatory salary disclosure laws); Michael Baker, Yosh Halberstam, Kory Kroft, Alexandre Mas & Derek Messacar, *Pay Transparency and the Gender Pay Gap* 3–4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 25834, 2021), https://www.nber.org/system/files/working_papers/w25834/w25834.pdf [<https://perma.cc/MU5D-YE5H>] (finding in a study of university faculty salaries in Canada that transparency laws reduce the gender wage gap). And for global comparisons more broadly using transparency, see Kaitlin Holmes & Danielle Corley, *International Approaches To Closing the Gender Wage Gap*, CTR. FOR AM. PROGRESS nn.23–30 (Apr. 4, 2017), <https://www.americanprogress.org/article/international-approaches-closing-gender-wage-gap> [<https://perma.cc/7EEF-M7WB>] (describing gender-disaggregated data collection and reporting practices in these countries). See, e.g., Leah Shepherd, *UK Delays Deadline for Employers To Report Gender Pay Gap Data*, SHRM (Apr. 14, 2021), <https://web.archive.org/web/20210414195117/https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/uk-delays-deadline-gender-pay-gap-data.aspx>. Whether the gender pay gap reporting requirements will have the intended impact is difficult to predict. See, e.g., Aneesh Raghunandan & Shiva Rajgopal, *Mandatory Gender Pay Gap Disclosure in the UK: Did Inequity Fall and Do These Disclosures Affect Firm Value?* 3–4 (June 12, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3865689 (finding a small reduction in the gender pay gap in some but not all U.K. companies after the enactment of the wage transparency laws).

it's them. Women lawyers are working hard—that is not the problem. “Simply put, women lawyers don’t need to ‘lean in’ any more than they have already done. What needs fixing is the structure and culture of law firms, so firms can better address the needs of the many women they recruit and seek to retain.”¹⁷⁴

Moreover, reporting this kind of data could also impact firms themselves. As Stephanie Bornstein has written: “When evaluating disclosure as a behaviorally informed intervention, we tend to focus on the *consumer* of the information Yet disclosure schemes also have nudge effects on the *producer* of the information.”¹⁷⁵ Perhaps regular reporting about the lack of equity in leadership roles and in salary could itself nudge change. We have seen that forced transparency around arbitration clauses led to law firms dropping them.¹⁷⁶ Finally, reflecting on the data could remind firms that it makes financial sense to retain valuable talent in which they have already invested significant resources rather than, as is sometimes the case, use lateral hires to make up for their attrition.

In the appendices, we provide several resources to help students and practitioners build and sustain cultures of transparency within legal workplaces, including: the Law Firm Equity Initiative questions from our 2022 survey; a list of questions from the latest NAWL study for decision-makers within legal organizations to reflect upon;¹⁷⁷ and a summary list of our questions here for law students to ask potential employers. These resources are simply a starting point. To advance progress, we urge readers to think critically about diversity, equity, and inclusion issues specific to their legal communities and make appropriate modifications to our resources.

174. LIEBENBERG & SCHARF, *supra* note 117, at 17.

175. Stephanie Bornstein, *The Enforcement Value of Disclosure*, 72 DUKE L.J. 1771, 1775 (2023) (explaining how being forced to provide information can cause the disclosing entity to change its behavior); Hillary A. Sale, *Disclosure's Purpose*, 107 GEO. L.J. 1045, 1047 (2019) (identifying the phenomenon of changed behavior through information disclosure). See also RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: THE FINAL EDITION* 103–29 (2021) for more on choice architecture.

176. See, e.g., Staci Zaretsky, *The First Biglaw Firm To Willingly Do Away With Its Mandatory Arbitration Policy*, ABOVE L. (Mar. 27, 2018, 10:42 AM), <https://abovethelaw.com/2018/03/this-biglaw-firm-is-the-first-to-step-forward-and-do-away-with-mandatory-arbitration-for-all-employees/> [<https://perma.cc/MHD8-R8U5>]. And this policy change applied to all employees at the firm and not just lawyers. *Id.*

177. DESTINY PEERY, THE NAT'L ASS'N OF WOMEN LAWS., 2021 REPORT SURVEY ON THE PROMOTION AND RETENTION OF WOMEN IN LAW FIRMS: IT'S TIME TO MOVE BEYOND THE NUMBERS 17, 21, 25 (2021) [hereinafter PEERY, 2021 REPORT].

C. Law Firms Vary—Choose Wisely

For the past thirty years, it has become evident that “law firms [are] extraordinarily well-designed for the preservation of the status quo, enabling only slow, minimal progress” in the representation of women, and especially women of color.¹⁷⁸ However slow, trends do show that “law organizations are headed in the right direction,” but to make faster and more substantial change, “they must initiate, or redouble, their efforts to advance critical goals of increased diversity and inclusion in their organizations.”¹⁷⁹

We encourage law firms to conduct an internal review of demographics within their organization as a whole, their leadership committees, and their hierarchy levels (Appendix C provides a list of questions, courtesy of NALP).¹⁸⁰ Knowing the composition of the organization is a necessary first step to initiate change. We suggest law firms prioritize diversity in leadership: “The importance of leadership in creating a more diverse and inclusive leadership structure and in leading toward a more diverse workforce cannot be understated: leadership matters.”¹⁸¹ Our own analysis bolsters these conclusions. We also encourage law firms to work with organizations, such as Diversity Lab,¹⁸² to understand whether and how external initiatives and their materials, resources, and models might bolster internal efforts.

There are also a handful of firms that have emphasized the importance of this work, implemented policies and initiatives, and seen positive results.¹⁸³ Sharing these best practices can set a standard. We are

178. Katrina Lee, *Solving for Law Firm Inclusion: The Necessity of Lawyer Well-Being*, 24 VAND. J. ENT. & TECH. L. 323, 325–26 (2022). See also Donald J. Polden & Leah Jackson Teague, *More Diversity Requires More Inclusive Leaders Leading by Example in Law Organizations*, 48 HOFSTRA L. REV. 681 (2020) (“As a general statement, law organizations—principally law firms—have been only moderately successful in enhancing workplace diversity in recent years even though there are frequent calls for great diversity in the legal profession.”).

179. Polden & Teague, *supra* note 178, at 697. See also Paola Cecchi-Dimeglio, *Designing Equality in the Legal Profession: A Nudging Approach*, 24 HARV. NEGOT. L. REV. 1 (2018) (suggesting a “Gender Balance System Design” approach for law firms).

180. PEERY, 2021 REPORT, *supra* note 177; *infra* Appendix C.

181. Polden & Teague, *supra* note 178, at 692.

182. DIVERSITY LAB, <https://www.diversitylab.com> [https://perma.cc/NMJ9-KSWP].

183. Although a top-five law firm in France did it differently:

Gianmarco Monsellato, head of TAJ insists it’s only an issue of leadership. His own firm is 50/50 gender balanced, at all levels – including equity partners and governance bodies. It’s fueled their success over the past decade, and TAJ is now the No. 5 law firm in France. How did he do it? Dramatically differently than most law firms. Most of his competitors have spent years

seeing law firms “stepping up and replying themselves to the work of closing the gender gap, joining gender equity campaigns, launching new initiatives designed to support the careers of [women] attorneys, coming up with new work models, and finding ways to provide additional workplace support in the face of unprecedented challenges.”¹⁸⁴ For example, national firms such as Hogan Lovells, Littler, Dorsey & Whitney, Reed Smith, Cooley, and Baker McKenzie have implemented DEI initiatives and concrete goals to measure their diversity efforts. Skadden has taken a comprehensive approach with impressive results: Women account for 47.5% of associate attorneys at Skadden, 27% of all partners, and 39% of members on the executive committee.¹⁸⁵ These efforts start with Skadden’s summer associate recruiting, which prioritizes diversity. In fact, the 2023 summer associate class was comprised of 59% women and 53% people of color.¹⁸⁶

Law firms have also partnered together to support diversity and equity initiatives. Diversity Lab’s “Move the Needle Fund” is a collaborative effort “designed and funded for five years” with \$5 million

organizing women’s initiatives, networks, or mentoring programs that have done little to increase the percentage of women reaching the top. The National Association of Women Lawyers’ recent report is pretty clear: These “fix the women” approaches have not delivered. Instead, Monsellato tackled the problem personally. He was involved in every promotion discussion. “For a long time,” he says, “I was the only one allocating cases.” He insisted on gender parity from the beginning. He personally ensured that the best assignments were evenly awarded between men and women. He tracked promotions and compensation to ensure parity. If there was a gap, he asked why. He put his best female lawyers on some of his toughest cases. When clients objected, he personally called them up and asked them to give the lawyer three months to prove herself. In every case, the client was quick to agree and managed to overcome the initial gender bias. . . . “If partners aren’t convinced, you won’t get anywhere. And diversity programs headed by women reporting to all-male boards will never work.” He never referred to his gender push as a diversity initiative, and he has never run diversity programs. “What I have done is promote people on performance. If someone works 50% of the time, we adjust that performance to its full-time equivalence. When you adjust performance on an FTE basis, maternity issues stop being an indicator.”

See Avivah Wittenberg-Cox, *How One Law Firm Maintains Gender Balance*, HARV. BUS. REV. (May 27, 2014), <https://hbr.org/2014/05/how-one-law-firm-maintains-gender-balance>.

184. Bell, *supra* note 33.

185. 2023 Vault Law Firm Diversity Survey: Skadden Report, VAULT, <https://media2.vault.com/14349665/skadden-arps.pdf> [<https://perma.cc/QB5N-2R5G>].

186. *Diversity and Inclusion at Skadden*, SKADDEN, https://www.skadden.com/-/media/files/about/diversity_and_inclusion_at_skadden.pdf [<https://perma.cc/AA7C-5ZMK>]. For more recent data on the number of women partners at each law firm, see *Law Firm Transparency Directory*, ABOVE L., <https://abovethelaw.com/law-firm-transparency/> (last visited Oct. 31, 2024).

“to test innovative initiatives to create a more diverse and inclusive legal profession.”¹⁸⁷ The participating firms (Eversheds Sutherland, Nixon Peabody, Orrick, and Stoel Rives) are: “(1) setting aggressive, public firm-specific diversity goals; (2) experimenting with innovative research-based methods to achieve them; (3) measuring the outcomes; and (4) sharing the results . . . with each other and the community.”¹⁸⁸

Not only are lawyers pushing for change, but clients are also asking for change—which means the bottom line may change. From a business standpoint, it makes economic sense to invest in gender and racial diversity.¹⁸⁹ “It makes good business sense to hire lawyers who reflect the diversity of citizens, clients, and customers from around the globe. Indeed, corporate clients increasingly require lawyer diversity and will take their business elsewhere if it is not provided.”¹⁹⁰

This sentiment has been expressed for decades. In 1999, Charles Morgan, then-General Counsel of BellSouth Corporation, and a few of his colleagues signed “a statement promising to consider law firm diversity when hiring their outside counsel.”¹⁹¹ In 2009, the American Bar Association created the Presidential Initiative Commission on

187. MOVE NEEDLE FUND, <https://www.mtnfund2025.com/> [<https://perma.cc/89T2-TWKY>]; see also Stephanie Russell-Kraft, *Law Firms Pledge \$5M To Fix Legal Industry's Diversity Problem*, BLOOMBERG L. (Sept. 18, 2019, 5:00 AM), <https://news.bloomberglaw.com/us-law-week/law-firms-pledge-5m-to-fix-legal-industrys-diversity-problem>.

188. MOVE NEEDLE FUND, *supra* note 188.

189. Research from Catalyst illustrates this point:

Organizations with inclusive business cultures and practices are 57.8% more likely to improve their reputations. Consumers are more likely to purchase, or consider purchasing, a product after viewing an advertisement perceived to be diverse or inclusive. Employees who view their workplace as inclusive are also likely to consider their organization to have ethical value. In economic downturns, companies recognize that investment in diversity contributes to public goodwill. An analysis of organizations during the Great Recession of 2008 found that investment in diversity tended to increase, even when other Corporate Social Responsibility (CSR) activities decreased. Companies with consistent, inclusive workplace cultures—especially as experienced by historically underrepresented groups—also outperformed the S&P 500 in average annual stock returns during the Great Recession (measured from 2006-2014).

Why Is DEI Important in the Workplace (Quick Take), CATALYST (June 24, 2020) (footnotes omitted), <https://www.catalyst.org/research/why-diversity-and-inclusion-matter/> [<https://perma.cc/HW4X-6XMF>].

190. ABA, PRESIDENTIAL DIVERSITY INITIATIVE, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 9 (2010).

191. Johnson, *supra* note 13 (quoting Stephanie Russell-Kraft, *Companies Use Diversity Data To Hold Law Firms Accountable*, BLOOMBERG L. (Apr. 3, 2017, 3:31 AM), <https://news.bloomberglaw.com/business-and-practice/companies-use-diversity-data-to-hold-law-firms-accountable>).

Diversity, in which over one hundred companies signed a call to action regarding diversity in the legal profession pledging to “end or limit . . . relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.”¹⁹² In 2017, Facebook changed its policy to require that at least one-third of outside counsel’s teams be women and minorities; in 2021, they increased the proportion to half.¹⁹³ Additionally, beginning in 2017, Hewlett-Packard (HP) established a ten percent “diversity holdback” policy on fees, which would allow the company to retain ten percent of invoiced fees if the external firm does not meet HP’s diversity requirement.¹⁹⁴ Since the enactment of the policy, HP has “on average enforced that threat on one or two firms each quarter.”¹⁹⁵ Other clients may draw a hard line, cutting ties with firms that are not diverse—which will ultimately impact the bottom line of the firm and its shareholders.

Finally, firms are also seeing their own employees hold them accountable for their inequality.¹⁹⁶ Pay disparity issues have come to the forefront for many law firms in the form of lawsuits from partners. For example, in 2017, the law firm Proskauer Rose was sued by a former equity partner who alleged that she suffered from gender-based discrimination and that the firm paid her “millions of dollars less than male partners who [were] similarly or less productive than she [was].”¹⁹⁷ The partner and Proskauer eventually settled; however, since then, other

192. Rhode, *Diversity and Gender Equity*, *supra* note 22, at 892 (quoting Rick Palmore, *A Call to Action: Diversity in the Legal Profession*, ASS’N CORP. COUNS. (2004), https://www.acc.com/sites/default/files/resources/vl/public/Article/16074_1.pdf [<https://perma.cc/TFJ7-K7J3>]); Ellen Milligan & Todd Gillespie, *Diversity at Elite Law Firms Is So Bad Clients Are Docking Fees*, BLOOMBERG (Oct. 5, 2021, 3:00 AM), <https://www.bloomberg.com/news/articles/2021-10-05/big-law-has-a-diversity-problem-and-corporate-clients-are-stepping-in>. *But see* Fiona M. Kay & Elizabeth H. Gorman, *The Customer Is Always Right? Corporate Client Influence and Women’s Attainment in Large US Law Firms*, J. PROS. & ORGS., Apr. 2024 (noting no direct link between women executives among a firm’s clients and greater representation of women at the partner level).

193. Johnson, *supra* note 13, at 59; Milligan & Gillespie, *supra* note 193.

194. Johnson, *supra* note 13, at 60; Milligan & Gillespie, *supra* note 193.

195. Milligan & Gillespie, *supra* note 193.

196. Matt Reynolds, *How Young Attorneys Are Shaking Up Law Firm Culture*, A.B.A. J. (Mar. 6, 2023, 8:40 AM), <https://www.abajournal.com/web/article/how-young-attorneys-are-shaking-up-law-firm-culture> [<https://perma.cc/83YC-L7QU>]. A young lawyer and her peers stated that: “[S]ocial media means young lawyers can quickly ‘compare notes’ to see if their firms are delivering on mental health and wellness. . . . [F]irms that ignore the demands of this next generation of talent, do so at their peril. ‘It won’t be long before Gen-Z are the clients.’” *Id.*

197. Meredith Mandell & Hilary Rosenthal, *Proskauer, Law Firm Known for Handling High-Profile Sex Harassment Cases, Is Accused Itself*, NBC NEWS (May 15, 2018, 4:50 PM), <https://www.nbcnews.com/news/us-news/proskauer-law-firm-known-handling-high-profile-sex-harassment-cases-n874411> [<https://perma.cc/Y8K4-6BKQ>].

women Big Law partners have brought similar lawsuits alleging gender-based discrimination.¹⁹⁸

All of these varying efforts point to the fact that each law firm has made policy choices in terms of who it hires and promotes, and how it rewards and pays its attorneys. Some law firms have recognized this challenge and successfully welcomed and retained women at all levels in the firm. Other law firms look much like they did twenty-five years ago. Choose wisely.

CONCLUSION

The truth remains: Women are not yet equal players in the legal field. Our study builds on the national-level averages of pay and leadership inequality by critically assessing key determinants of career success. Because we were able to gather more specific and granular information, we could dissect significant patterns and differences among law firms. Our data highlights the impact of the high attrition rate for women which has resulted in the lack of women in leadership positions, the lack of women serving on management and compensation committees, and the lack of women who are the top earners in their firms. Yet our data also shows that law firms differ widely in terms of retention and leadership roles for women. Moreover, policy choices like representation on compensation committees, as well as compensation methods, can have impacts throughout the firm.

And so, this Article is for law students and their supporters—to equip them with information we wish we had known when we were in their position, as they navigate through the career service office, callbacks, and final interviews. Ultimately, law students cannot do this alone. Therefore, we urge career services, law firms, legal organizations, and practicing attorneys to support our efforts—to be

198. Stephanie Russell-Kraft, *Partner Settles Bias Suit Against Her Law Firm, Proskauer*, BLOOMBERG L. (Aug. 13, 2018, 3:35 PM), <https://news.bloomberglaw.com/business-and-practice/partner-settles-bias-suit-against-her-law-firm-proskauer>. She was not the first. Previously, Ellen Pao “lost a highly publicized gender discrimination case against Kleiner, Perkins, Caufield & Byers. The case unveiled disturbing gender discrimination that affects the lives of many people, especially in the legal profession.” Edward S. Adams & Samuel P. Engel, *Gender Diversity and Disparity in the Legal Profession: An Empirical Analysis of the Gender Profile in National Law Firms and Law Schools*, 63 BUFF. L. REV. 1211, 1211 (2015) (footnote omitted). The same is occurring in the legal education profession as well. In 2018, seven women secured a \$2.66 million settlement against the University of Denver Law School, after the University paid women significantly less than male law professors without an explanation. Press Release, EEOC, University of Denver to Pay \$2.66 Million and Increase Salaries To Settle EEOC Equal Pay Lawsuit (June 1, 2018), <https://www.eeoc.gov/eeoc/newsroom/release/6-1-18.cfm> [<https://perma.cc/G2XJ-9EAR>].

transparent in the issue of gender inequality, to hold the profession accountable, and to work toward a better future.¹⁹⁹

We imagine that, by graduation, law students have become invested in the success of the legal field—acknowledging its faults and striving for its betterment. To be a part of the legal field is to be a part of change.²⁰⁰ We, as practitioners, legal educators, and the legal community have the ability to crack this next glass ceiling.

199. Gertner, *supra* note 22, at 1479 (“The response to discrimination has to be a collective one, not an individual response.”).

200. Eli Wald, *A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who Is Responsible for Pursuing Diversity and Why*, 24 GEO. J. LEGAL ETHICS 1079, 1101, 1112 (2011). Nance & Madsen, *supra* note 23, at 273–74 (“Diversity closely relates to the concepts of equality, justice, and the opportunity for full and meaningful participation in our society. These are ideals that the legal profession should seek to uphold everywhere, but especially in its own profession.” (footnote omitted)).

APPENDIX A: LAW FIRM EQUITY INITIATIVE QUESTIONS

Please report the number of men and women in the following positions/roles:

- All Attorneys
- Junior Associates (Associates with 1–2 years of experience practicing law or equivalent)
- Mid-Level Associates (Associates with 3–4 years of experience practicing law or equivalent)
- Senior Associates (Associates with at least 5 years of experience practicing law or equivalent)
- Alternative Partner Track Attorneys (Non-associates and non-partner attorneys, this may include Special Counsel, Of Counsel, Senior Counsel, and other titles; please do not include emeritus attorneys in these numbers)
- Non-Equity Partners, Shareholders, or Equivalent
- Equity Partners, Shareholders, or Equivalent
- Practice Group Leaders, Section Leaders, or Equivalent
- Compensation Committee Members or Equivalent
- Hiring Committee Members or Equivalent
- Firm Board Members, Executive Committee Members, or Equivalent
- Top 20% of Earning Partners
- Attorneys with the Firm for 15+ Years
- Attorneys with the Firm for 10–14 Years
- Attorneys with the Firm for 5–9 Years
- Attorneys with the Firm for less than 5 Years

Please answer the following questions with a number:

- Of the women counted in the Senior Associates, Alternative Partner Track Attorneys, Non-Equity Partners, and Equity Partners categories above, how many started with the firm as a Junior Associate or equivalent?
- Of the women attorneys at the firm, how many are full-time (averaging more than 30 billable hours per week)?
- In the last 10 years, how many women have served as Managing Partner, Firm President, or equivalent?

Please answer the following multiple-choice questions:

- Partner compensation data at our firm is determined by:
 - a. An objective formula only
 - b. A combination of an objective formula and subjective evaluation by a compensation committee or other body
 - c. Subjective evaluation by a compensation committee or individual decision maker only
- Partner compensation data at our firm is:
 - a. Fully transparent
 - b. Transparent only to a leadership group within the firm
 - c. Available only to individuals making compensation decisions
- “Origination” credit for compensation (check all that apply):
 - ☐ Is awarded to the partner who first brought the client to the firm
 - ☐ Is awarded to the partner(s) responsible for originating both the client relationship and the individual matter
 - ☐ Is weighed more heavily in compensation than the contributions of partner(s) handling matter for the client
 - ☐ Is passed on from partner to partner at the discretion of the originating partner
 - ☐ Is passed on from partner to partner based on objective criteria

APPENDIX B: A STEP-BY-STEP GUIDE TO IMPLEMENTING
THE LFEI STUDY

Step 1: Securing Leadership & Assistance

- Find your team:
 1. Advising Professor or Practitioner
 - Purpose: Leader and spearhead of the study
 2. Survey Manager
 - Purpose: Day-to-day monitoring of progress
 3. Communications and Design Liaison
 - Purpose: Contact person for law firms regarding submissions and questions; contact person for design support staff
 4. Data Analyst
 - Purpose: Maintain spreadsheet of data and conduct analyses
 5. Trusted Community Leaders/Focus Groups To Advise
 - Purpose: Provide support, guidance, and a review of report before publication
 6. Publisher
 - Purpose: Publish report (if a paper copy is desired)
- Create a separate email account to streamline documents and conversations

Step 2: Budgeting

- Approximately \$5,000²⁰¹ to complete the LFEI, from survey development to publication
 - Money or credit
 - Law students and undergraduate students who assist may be able to receive academic credit for their work. Check with your local law school or undergraduate university to see if there is this opportunity. Otherwise, you will have to account for hourly wages for student researchers.
- Funding suggestions
 - Law schools
 - Women's research and innovation groups
 - State bar associations

201. This is based on the amount of work it took to complete the study of Milwaukee. Larger cities with a greater number of law firms may need to increase the budget to account for the increase of time.

- Local businesses

Step 3: Survey Development

- See Appendix A for sample survey questions
- Choose your survey software
- Input survey questions into software
 - Include questions about contact information and consent to publish aggregate information
- For academic researchers, confirm with your Institutional Review Board that this study is exempt (as this one was)

Step 4: Survey Dissemination

- Solidify scope
 - Geographic area?
 - Firm size?
- Develop firm and firm contact lists
 - Use platform with sharing and live editing capabilities
 - Create firm list
 - Firm categories:
 - (1) All firms
 - (2) Key firms (*i.e.*, these firms' participation is key to other firms' participation)
 - (3) Reach firms (*i.e.*, these firms are unlikely to participate)
 - Create firm contact list
 - Categories:
 - (1) People you know (*e.g.*, allies, mentors, sponsors, alumni)
 - (2) Managing partners
 - (3) Hiring partners
 - (4) DEI committee leaders and members
 - Ask your career planning adviser for additional input
- Build response spreadsheet
 - Use platform with sharing and live editing capabilities
 - Include the following categories:
 - Firm name
 - Initial contact name and email
 - Responding contact name and email
- Establish communication timeline and develop associated email templates
 - Rounds:
 - Round 1: Initial contact
 - Round 2: Follow-up contact

- Round 3: Reminder contact
- Round 4: Final contact
- General email template content:
 - Name, year, and law school
 - Brief synopsis of the LFEI and its goals
 - Survey link and attachment with questions
 - Contact information

Step 5: Survey Data Analysis

- Method
 - Excel
 - Outside experts on statistical analysis
- Subjective and written response analysis

Step 6: Report Building and Editing

- Find the story the data is telling you
- Ask for help
 - Undergraduate graphic design creators
 - Community members and local leaders
- Organize publishing outlets, speaking engagements, and/or press coverage

APPENDIX C: QUESTIONS DECISION-MAKERS SHOULD BE
ASKING THEMSELVES (FROM NALP)²⁰²

Compensation:

- Who is responsible for making compensation decisions? What are the demographics of this group?
- What are the criteria for compensation decisions?
- What data is made available to the [decision-makers]? Who provides that data?
- Does your firm analyze compensation data for potential biases and disparities? What type of analyses does your firm conduct? How often does your firm conduct these analyses?
- Does your firm know whether it has compensation gaps based on gender, race, or other identity characteristics?
- Is compensation for women in your firm lower than men? If so, why?
- Are the billing rates for women in your firm lower than men's? If so, why?
- What has your firm done to address biases and disparities in your compensation structure, process, and/or outcomes? Does your firm know if these interventions have been successful? If yes, how has your firm measured successor improvement?

Promotion:

- Who makes decisions about promotion to partner? What are the demographics of these people? Who is informed of that process and when?
- Does your firm have a standardized process that everyone being evaluated or seeking promotion goes through? What is that standardized process?
- How do performance evaluations factor into promotions to partner?
- Who is involved in planning for succession at your firm? What role does each of these individuals play?
- What are the demographics of your firm's departing relationship partners compared to their replacement in the last 10 years?
- How does your firm take the potential for bias into account in succession planning?

202. PEERY, 2021 REPORT, *supra* note 177, at 17, 21, 25.

APPENDIX D: COMPILATION OF KEY QUESTIONS FOR LAW
STUDENTS TO ASK

Key Questions on Leadership:

- What initiatives does the firm have regarding formal and informal mentorship for junior associates? Are associates encouraged to “shadow” more senior lawyers? Can you share recent success stories about sponsorship relationships?
- How are deal and litigation teams staffed (within the office and within the whole firm)?
- How have you been impacted by the firm’s diversity efforts?
- How are Practice Group Leaders and committee members selected?
- How many women are members of your firm’s management committee?
- In 2017, the Diversity Lab launched the Mansfield Rule, encouraging law firms to consider at least thirty percent of diverse lawyers for leadership roles. Does your firm have a policy about or consider the demographic makeup of classes under consideration for partnership?
- How does the firm respond to client requests for diverse teams?

Key Questions on Attrition & Culture:

- Do you conduct stay interviews with employees or have other 360-degree review mechanisms? Do you conduct firm culture surveys? How are the results acted upon?
- Are there particular benefits that encourage both work and family planning?
- Do you offer paternity leave? How many men have taken the full paternity leave over the past three years?
- How would the firm handle a situation in which someone made a sexist, racist, homophobic, or otherwise prejudiced remark? Similarly, how would the firm handle a situation in which a senior attorney acted upon a sexist, racist, homophobic, or otherwise prejudiced belief?
- What is the attrition rate of women lawyers in your firm after five (or fifteen) years?
- What strategies or initiatives does your firm have to address the attrition of senior attorneys? Does your firm have any formal attorney retention initiatives?

Key Questions on Pay Equity & Promotion:

- Can you please describe your firm's billable hours requirement and processes? For example: Who signs off on associates' timesheets? Does that person have review criteria? Are there specific pay increases or bonuses tied to billable hours?
- Who is responsible for making compensation decisions (assuming the person you are meeting might know this and considering the type of firm—because compensation at Big Law firms will most likely be determined by the market for associates)?
- Are there discretionary bonuses as part of the compensation package? Can you explain how that works and how they are allocated?
- Who conducts and provides input for performance evaluations?
- What is your origination policy?
- What are the demographics of the compensation committee?
- Does your firm analyze compensation for potential biases and disparities?
- Does your firm know whether it has compensation gaps based on gender (or race)?
- What has the firm done to address bias in your compensation structure?
- Are there practice groups in your firm that typically use flat-fee arrangements rather than hourly billing? Are associate billable hours requirements adjusted when associates work primarily on flat-fee matters?

Key Questions on Transparency:

- What programs, initiatives, or strategies does your firm implement to improve and maintain diversity within the organization? What have you been a part of?
- How does your firm track and measure diversity, equity, and inclusion (DEI) initiatives? Are all employees required to complete DEI and cultural competence training?
- Does your firm allow associates to receive bonus-creditable hours for any DEI initiatives?
- Who is responsible for ensuring that your firm's DEI goals and objectives are met?
- Do you publish your DEI data internally?
- Does your firm have any specific, internal DEI groups? If so, are associates encouraged to join such groups?

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